STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Department of Commerce and Economic Opportunity	)))	
	)	Docket No. 13-0499
Approval of the Energy Efficiency and Demand-Response Plan Pursuant to 220ILCS 5/8-103 and 220 ILCS 5/8-104 Of the Public Utilities Act	))))	

STATEMENT OF POSITION

OF

THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois
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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("the People" or "AG"), and pursuant to the request of the Administrative Law Judges, hereby file their Statement of Position in the above-captioned proceeding, consistent with the Initial Brief filed by the People on December 5, 2013.

I. INTRODUCTION/STATUTORY BACKGROUND

In their Initial Brief, the People noted that Section 8-103 and Section 8-104 of the Public Utilities Act ("the Act") require electric and natural gas utilities, respectively, to deliver cost-effective energy efficiency programs to their residential, commercial and industrial electric and gas customers. 220 ILCS 5/8-103, 8-104. Under Section 8-103 of the Act, the electric utilities shall implement 75% of the energy efficiency measures approved by the Illinois Commerce Commission ("the Commission"), and the remaining 25% of the measures shall be implemented by the Department of Commerce and Economic Opportunity ("DCEO"). 220 ILCS 5/8-103(e). Similarly, under Section 8-104 of the Act, DCEO shall implement 25% of the energy efficiency measures approved by the Commission, with natural gas utilities supplying the remaining 75% of the measures. 220 ILCS 5/ 8-104(e). These programs must be designed "in conjunction with the utility and the (ICC) filing process." 220 ILCS 5/8-104(e), 8-104(e). The portfolio of measures, administered by both DCEO and the utility, shall, in combination, be designed to achieve the annual savings targets described in subsections (b) and (c) of Section 8-103 and 8-104. *Id.* The utility and DCEO are charged with agreeing upon a reasonable portfolio of measures and determining the measurable corresponding percentage of the savings goals associated with measures implemented by the utility or DCEO. 220 ILCS 5/8-103(e); 8-104(e).

DCEO under these statutes is charged with delivering programs for both public section and low-income residential customers. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. Each utility is permitted to recover costs of those energy efficiency measures through an automatic adjustment clauses. Costs collected by the utility for measures implemented by DCEO are deposited into the Energy Efficiency Portfolio Standards Fund, and shall be used by DCEO solely for implementation of those measures. 220 ILCS 5/8-103; 8-104(e). In addition, utilities must coordinate with DCEO to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level, with the programs targeted to households with incomes at or below 80% of area median income. 220 ILCS 5/8-104(f)(4); 8-104(f)(4).

DCEO is proposing goals that are drastically modified downward from those originally intended in Sections 8-103 and 8-104, given the statutory budget cap limits[1]. In addition, DCEO witnesses have made clear that DCEO believes it overestimated the level of savings goals it could achieve in the past, and that its proposed Plan savings goals are conservative. DCEO Ex. 6.0 at 11. There is consensus that DCEO faces significant challenges in eliciting participation among the two customer groups the General Assembly has identified as DCEO's targeted energy efficiency customer base -- public sector and low-income ratepayers. DCEO reports, for example, that numerous communities within Northern Illinois receive free or reduced cost electric delivery service as a result of franchise agreements with Commonwealth Edison Company ("ComEd"), making public sector customer interest in efficiency offerings particularly challenging. DCEO Ex. 6.0 at 33. In addition, low income residential efficiency offerings must be designed with the recognition that low-income customers have very limited or no available funds for efficiency investments. *Id.* at 23.

That being said, statutory requirements for cost-effectiveness and long-established evaluation parameters for energy efficiency programs remain essential components of DCEO's program delivery. In this docket, DCEO has presented a portfolio that has adjusted energy savings goals downward based on "realization rates" that are inappropriate. Further, DCEO seeks permission from the Commission to eliminate Net-to-Gross ratio estimation and adjustments of program measures for *both* its public sector and low income programs. As discussed below, the request to modify or eliminate evaluation long-established evaluation tools that help ensure that efficiency programs are cost-effective should be rejected by the Commission. Approving savings goals that are unnecessarily conservative does low income and public sector customers no good. In light of the recessionary economy in which Illinois finds itself, Commission approval of a DCEO three-year Plan that ensures maximum participation in cost-effective efficiency programs among these two customer classes is critical to the goals of reducing energy usage and ensuring affordable, least cost utility service, particularly for Illinois' most financially vulnerable customers.

In addition, DCEO has presented a portfolio of programs that includes some questionable configurations in terms of cost-effectiveness, according to AG witness Philip Mosenthal.[2] In

[1] See 220 ILCS 5/8-103(d); 8-104(d).

[2] Mr. Mosenthal has 30 years of experience in all aspects of energy efficiency, including facility energy management, policy development and research, integrated resource planning, cost-benefit analysis, and efficiency and renewable program design, implementation and evaluation. He has developed numerous utility efficiency plans, and designed and evaluated utility and non-utility residential, commercial and industrial energy efficiency programs throughout North America, Europe and China.

Mr. Mosenthal has also completed or directed numerous studies of efficiency potential and economics in many locations, including China, Colorado, Delaware, Kansas, Maine, Massachusetts, Michigan, New England, New Jersey, New York, Quebec, Texas, and Vermont. These studies ranged from high level assessments to extremely detailed, bottom-up assessments evaluating thousands of measures among numerous market segments. A current example of the latter is an ongoing project to analyze the electric, natural gas and petroleum efficiency and addition to their Standard and Custom program offerings, DCEO proposes several "targeted programs" that Mr. Mosenthal believed created an unnecessarily complicated structure. He recommends that the DCEO focus on comprehensive solutions for its public customers without complicating their offerings, as discussed below.

DCEO also seeks unlimited flexibility to modify its Plan with no limitations. However, as discussed later in this Brief, approval of plans through this three-year process becomes somewhat meaningless if DCEO obtains such unlimited flexibility authorization. Reasonable guidelines, as recommended by AG witness Mosenthal, must be a part of any Commission-approved DCEO Plan.

Regarding issues surrounding evaluation, measurement and verification ("EM&V"), AG witness Mosenthal notes that it is unclear exactly what DCEO is proposing about how savings would be counted for various programs that Mr. Mosenthal believes are more realistically viewed as simply additional services supporting existing core programs. AG Ex. 1.0 at 6. These issues raise concerns about potential double-counting of savings, and what additional incremental savings are supposed to be derived from these programs.

Another issues surrounds DCEO's inability to date to participate in the Illinois Power Agency's annual energy efficiency procurement process outlined under Section 16-111.5B of the Act. Once again, this year, DCEO was unable to participate in the utilities' existing Request for Proposal ("RFP") process because, according to DCEO, participating in it would require it to violate State procurement laws. This docket, as discussed below, presents an opportunity for the Commission to provide some guidance on this problem, particularly since Section16-111.5B makes **clear** that the efficiency procurement programs should be expansions of existing Section 8-103 efficiency programs. 220 ILCS 5/16-111.5B(b).

For all of these reasons, the Commission should enter an Order that directs DCEO to reformulate its plan to revise its estimate of energy savings goals, modify program proposals consistent with the recommendations made in this Brief and ensure that the same EM&V rules that apply to the utilities likewise apply to DCEO.

Finally, the People urge the Commission to direct DCEO to work with the other gas and electric utilities in the State and the Stakeholder Advisory Group ("SAG") to develop an Illinois Policies and Procedures Manual. The goal of the establishment of a Policy Manual would be to ensure that evaluators and program administrators in the various utility service territories and customer bases play by the same rules in terms of monitoring savings achieved and evaluating programs. Currently, the utility and DCEO Program Administrators and their individually selected evaluators at times apply different evaluation standards, as discussed below. For these reasons, the People urge the Commission to include within its Order specific direction for the

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renewable energy potential for New York State, on behalf of the New York State Energy Research and Development Authority (NYSERDA).

Mr. Mosenthal is currently a lead advisor for business energy services in Rhode Island and Massachusetts on behalf of the Energy Efficiency Resource Management Council and the Energy Efficiency Advisory Council, respectively, overseeing and advising on utility program administrators plans, program designs, implementation and performance in those states.

He has been actively engaged in the Illinois Stakeholder Advisory Group (SAG) since its inception, representing the People of the State of Illinois. Prior to co-founding Optimal Energy in 1996, he was the Chief Consultant for the Mid-Atlantic Region for XENERGY, INC. (now DNV-KEMA). Mr. Mosenthal has a *B.A.* in Architecture and an *M.S.* in Energy Management and Policy, both from the University of Pennsylvania. AG Ex. 1.0 at 2-3.

SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state as delivered by various program administrators can be meaningfully and consistently evaluated.

These and other issues are discussed below.

II. PROPOSED DCEO PROGRAMS

The People observe that DCEO has proposed a portfolio of programs that, generally, fall into three main categories: public sector, low-income sector and market transformation programs. DCEO Ex. 1.0 at 8. DCEO seeks to serve the public and low-income sectors through a series of incentive programs that offer grants or rebates to participating consumers. DCEO Ex. 1.0 at 8. DCEO also seeks to offer "market transformation programs" in an effort to support the incentive programs offered by DCEO and the utilities through consumer education and training for building industry professionals on various aspects of energy efficiency. DCEO Ex. 1.0 at 8.

A. Custom and Standard Programs

Within the public sector, DCEO proposes two main programs modeled on successful private sector business programs and intended to cover all cost-effective efficiency opportunities in the public sector. AG Ex. 1.0 at 4-5. These programs generally fall under the heading of "Standard" and "Custom." DCEO Ex. 1.0 at 20. The Standard program offers pre-determined rebates for specific measures. Based on his analysis, AG witness Mosenthal generally views these programs as cost-effective in most situations and for which savings can be estimated on average and promoted to large numbers of customers. AG Ex. 1.0 at 7. The design of the Custom program seeks to provide customized services to public sector customers for all other cost-effective measures. These Custom programs also typically provide: high levels of marketing and outreach; detailed technical assistance and analysis to assist with identifying opportunities and encouraging adoption; "handholding" services such as assisting customers with entering into performance contracting or financing agreements, developing bids and specifications, and procuring contractors; and financial incentives to overcome cost barriers and encourage the customers to adopt the recommended measures. AG Ex. 1.0 at 7. The People support these two key programs for the public sector.

The People appreciate DCEO's agreements to reallocate funds identified for the targeted programs to other public sector programs in the event the money cannot be spent as effectively as the Plan anticipates and to update its energy efficiency potential study within the next six months to include the savings potential for public sector data center projects in Illinois and to share those results with the SAG. DCEO IB at 17. Overall, the People support DCEO's plan to serve the public and low-income sectors through its Standard and Custom programs and encourage the Commission to approve these programs. However, DCEO's proposal to create separate "targeted" programs outside of the Custom portfolio should be re-evaluated, as discussed below. AG IB at 8-9.

B. Public Sector "Targeted Programs"

In their Initial Brief, the People noted that DCEO also proposes additional "targeted programs" that are focused on specific opportunities. DCEO Ex. 1.1. Although the targeting of specific initiatives to particular markets and opportunities can be the basis of a good strategy, the People cannot fully comprehend DCEO's logic in separating these programs out from the main programs that appear to already cover these opportunities. AG Ex. 1.0 at 7. According to AG witness Mosenthal, a more beneficial strategy would be for DCEO to simply provide what DCEO labels "targeted programs" as targeted services within the Custom program. *Id.*

Some of the programs are more aptly described as services that support the primary programs and leads to an over-complication of the overall plan. According to Mr. Mosenthal, separating out these program budgets paints a very unclear picture of which programs are cost-effective and why certain things are targeted. AG Ex. 1.0 at 8. In the end, Mr. Mosenthal's analysis also showed that many of its projects are not clearly cost-effective. AG Ex. 1.0 at 8. Finally, the rationale behind many of these programs and how they are structured is not clear or compelling. Based on the analysis of AG witness Mosenthal, the People recommend that the Commission urge DCEO to focus on comprehensive solutions for its public customers to avoid overly complicating their offerings, particularly where some of DCEO's proposed programs appear to operate more like *services* that any custom program customer should be automatically eligible to receive. AG Ex. 1.0 at 5.

Notwithstanding the People's general support of the Custom and Standard programs, the People still object to DCEO's planned "market transformation programs" primarily because DCEO has not demonstrated why these programs must act as standalone programs and not be offered as targeted services within the Custom program. AG IB at 10. From the outset, the People applaud DCEO's commitment to continue working with the SAG on a number of the proposed targeted programs. DCEO IB at 17. However, this commitment does not fully overcome the objections raised by the People in their Initial Brief.

First, the People noted that the programs act more like services that support the primary programs, which over-complicates the overall plan. Second, the act of separating out these program budgets paints a very unclear picture of which programs are cost-effective. AG Ex. 1.0 at 8. Finally, the rationale behind many of these programs and how they are structured is not clear or compelling. DCEO states in its Brief that it "agrees to re-allocated the funds identified for the targeted programs to other public sector programs 'in the event the money cannot be spent as effectively as anticipated in this Plan.'" DCEO IB at 17. This accommodation is in response to a Staff recommendation, according to DCEO. But Staff's Initial Brief only references this alternative within the construct of the Wastewater Treatment Facilities Program. Staff IB at 17. The proposal, too, is vague and lacks clear guidelines for implementing the strategy. The People recommend that the Commission order DCEO to focus on comprehensive solutions for its public customers and offer most of these programs as services offered under the Custom program. AG IB at 9. This will eliminate extra administrative costs and improve marketing of the programs overall.

1) Smart Energy Design Assistance ("SEDAC")

DCEO proposes to offer a Smart Energy Design Assistance ("SEDAC") program, which essentially appears to be the technical assistance component of DCEO's rebate programs. It is designed to offer public sector customers technical assistance services at a various levels, from initial consultation to energy audits, to detailed design assistance and implementation support. DCEO Ex. 1.1 at 23.

AG witness Mr. Mosenthal had initially raised concerns in his testimony about DCEO's SEDAC program, notably that it (1) should be under the heading of the Custom program, (2) has a low implementation rate, (3) could result in double counting, and (4) has questionable and unclear cost-effectiveness. AG Ex. 1.0 at 8. However, in his rebuttal testimony DCEO witness Mr. Baker clarified that the implementation rate approaches half of the SEDAC clients and noted that evaluators Navigant and ADM Consulting are careful to avoid double counting. DCEO Ex. 8.0 at 12-13. Finally, Mr. Baker notes that the SEDAC savings are additional to the Custom program. DCEO Ex. 8.0 at 12-13. In light of Mr. Baker's testimony, the People consider these particular issues with the SEDAC program to be resolved.

However, Mr. Mosenthal also recommended that DCEO combine SEDAC into its Custom program in order to provide integrated services to that subset of customers who are sincerely motivated to follow through with implementation. AG Ex. 1.0 at 7-8. In its current form, it is unclear why providing technical assistance services that do not actually lead to final installation and financial assistance should be considered a "program." It is also not entirely clear why it should be administered separately to customers. This creates a risk of creating confusion in the market. Integrating SEDAC into the custom programs would allow for better management of resources and ensure that studies are only performed in cases where there is a high likelihood that efficiency measures will be adopted. AG Ex. 1.0 at 7-8.

In their Reply Brief, the People noted that they were satisfied with the resolution of the double-counting and implementation rate issues potentially impacting DCEO's proposed Smart Energy Design Assistance ("SEDAC") program. AG IB at 10-11. Nonetheless, the People still observe that DCEO has not made it entirely clear why this program should be administered separately to customers. AG IB at 11. DCEO, in its Initial Brief, noted that it has market experience with SEDAC and performing the anticipated design assistance. DCEO IB at 29. Generally speaking, the People appreciate DCEO's market experience and accept that SEDAC could function as a standalone program. Nonetheless, there remains a danger, as noted by Mr. Mosenthal, that administrative barriers could still prevent customers from participating in both SEDAC and the Custom programs. AG Ex. 1.0 at 7-8.

The People provided support for their recommendation that DCEO combine SEDAC into its Custom program in order to provide integrated services to that subset of customers who are sincerely motivated to follow through with implementation. AG IB at 11. Finally, the People noted that a standalone program as DCEO has proposed creates a risk of marketplace confusion. AG IB at 11. The People reiterate that integrating SEDAC into the custom programs would allow for better management of resources and assist in overcoming some administrative barriers. AG IB at 11. In addition, it may be helpful for DCEO to seek the input of the SAG on these issues prior to implementing this program.

The People, therefore, urge the Commission to instruct DCEO to submit a revised plan under Section 8-103(f) and 8-104(f) to design SEDAC in such a way as to avoid market confusion and ensure that no administrative barriers are created that would prevent customers from participating in both SEDAC and the Custom program. As noted throughout the People's briefs, it may be helpful for DCEO to seek the input of the SAG on these issues prior to implementing this program.

2) High Impact Natural Gas Efficiency Bonus ("HINGE")

In their Initial Brief, the People observed that DCEO proposed the High Impact Natural Gas Efficiency Bonus ("HINGE") program, which is described as a vehicle to provide "bonus incentives" for large gas projects. See DCEO Ex. 1.1 at 19. From the outset, it should be noted that the People generally support the concept of offering additional funds for customers to adopt more extensive efficiency opportunities and to be more comprehensive, provided that those projects are cost-effective and would not likely have happened without the additional funds. In this case, however, it appears that DCEO has admitted that HINGE will *not* be cost-effective.

Initially, the People raised concerns about the measurement of these higher incentives. AG Ex. 1.0 at 9. However, on rebuttal, DCEO clarified its position and the incentives are no longer an issue from the People's perspective. DCEO Ex. 8.0 at 5. Notwithstanding, it remains alarming to the People that DCEO's own projections demonstrate that the HINGE program is not cost-effective. The program has an estimated Total Resource Cost ("TRC") benefit-cost ratio of 0.86. DCEO Exhibit 2.11. DCEO essentially proposes to provide additional funds that could already be offered under the Custom program, but only available for large gas projects to capture additional savings that DCEO projects may not even be cost-effective. AG Ex. 1.0 at 10. The People do not see the benefit to maintaining a completely separate program, with all of its attendant administrative costs that, as modeled, would only capture additional non-cost-effective savings. AG Ex. 1.0 at 11. Therefore, the People urge the Commission to direct DCEO to file a revised plan under Section 8-103(f) and 8-104(f) that offers the HINGE program as a component of its Custom program plan that offers bonus incentives up to 75% of retrofit and 100% of lost opportunity incremental costs as necessary to capture cost-effective savings.

In their Reply Brief, the People stated that they generally supported the concepts behind DCEO's proposed High Impact Natural Gas Efficiency Bonus ("HINGE") program, a vehicle to provide "bonus incentives" for large gas projects. AG IB at 11-12. Despite resolving several of the issues surrounding HINGE, the People remain concerned about the cost-effectiveness of the HINGE offering as a stand-alone program. DCEO makes statements in its Initial Brief that certain pilot projects ultimately proved to be twice as cost-effective as projected. DCEO IB at 14. However, as previously noted by the People, HINGE has an estimated Total Resource Cost ("TRC") benefit-cost ratio of 0.86. DCEO Exhibit 2.11. While the People applaud the results that DCEO achieved on certain projects in the pilot, the People note that citation to a few cost-effective projects does not rectify DCEO's own projections that, overall, the HINGE program is not cost-effective. AG IB at 11.

The People also remain concerned about the additional administrative costs associated with HINGE that, as modeled, would only capture additional non-cost-effective savings. AG IB at 11; AG Ex. 1.0 at 11. Therefore, the People urge the Commission to direct DCEO to file a revised plan under Section 8-103(f) and 8-104(f) that offers the HINGE program as a component of its Custom program plan that offers bonus incentives up to 75% of retrofit and 100% of lost opportunity incremental costs as necessary to capture cost-effective savings.

3) Wastewater Treatment Facility Program

DCEO proposes a standalone wastewater treatment ("WWT") facility program. DCEO Ex. 1.1 at 15. WWT facilities are highly energy intensive, and typically offer large and cost-effective opportunities for efficiency improvements. Therefore, programs designed to increase the efficiency of these facilities can be highly important to the public sector. However, DCEO may not be taking full advantage of the potential of such a program where it chose not to devise its WWT program as a targeted marketing strategy within its Custom program. Instead, DCEO designed its WWT program as an entirely separate program. This runs the risk of ignoring many potentially rewarding efficiency opportunities common among WWT facilities. In addition, the People note that the WWT program is barely cost-effective at a 1.01 Total Resource Cost (TRC) benefit-cost ratio. AG Ex. 1.0 at 12.

The WWT program as designed by DCEO, promotes a single technology category– improved aeration. DCEO Ex. 1.1 at 15. While this is an admittedly important efficiency measure for WWTs, it is not the only likely cost-effective opportunity. In fact, it appears that the program ignores all other electric efficiency opportunities beyond the aeration systems. Also of critical importance is that the program, as designed, achieves no gas savings. According to AG witness Mosenthal, given the significant thermal loads that many WWT facilities carry, completely ignoring gas opportunities and CHP in a standalone WWT program is inappropriate. AG Ex. 1.0 at 12.

Given the marginal cost-effectiveness of this program,[3] it is not clear to the People why DCEO would not target WWT facilities as customers and pursue the most cost effective, comprehensive solutions for them under the Custom program. The People would, therefore, recommend that DCEO simply target the WWT sector through dedicated account management in its Custom program. AG Ex. 1.0 at 12-13. Following this protocol, a WWT program could still have the ability to add additional features or services necessary to effectively leverage any other government or grant funds for these customers. This will increase the flexibility of the program and offer opportunities to pursue additional cost-effective improvements in WWT facilities. Finally inclusion under the Custom programs would ensure that all projects are highly cost-effective, reduce unnecessary administrative costs and avoid confusion in the market place. Therefore, the People urge the Commission to instruct DCEO to consider including the WWT program in its Custom program or designing it in such a way as to avoid market confusion and avoid the creation of unnecessary administrative expenses. As noted throughout this Brief, it may be helpful for DCEO to seek the input of the SAG on these issues prior to implementing this program.

In their Reply Brief, the People reiterated that DCEO may not be taking full advantage of the potential of its Wastewater Treatment Facility ("WWT") program because DCEO has chosen not to devise its WWT program as a targeted marketing strategy within its Custom program but rather treat it as a standalone program. AG IB at 13. As the People noted, this runs the risk of ignoring many potentially rewarding efficiency opportunities common among WWT facilities. As a prime example, the program targets only a single technology category – aeration systems. AG IB at 13. Unfortunately, based on a review of AG witness Mosenthal, it appears that the program ignores all other electric efficiency opportunities beyond the aeration systems and the program achieves no gas savings – an inappropriate result for a standalone program. AG Ex. 1.0 at 12.

DCEO, in its Initial Brief, however, did not directly address these concerns. Given the marginal cost-effectiveness of this program,[4] it remains unclear to the People why DCEO would

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[3] This is particularly true when compared to the highly cost-effective projects in most public sector custom programs with which Mr. Mosenthal is familiar.

[4] This is particularly true when compared to the highly cost-effective projects in most public sector custom programs with which Mr. Mosenthal is familiar.

not choose to target WWT facilities as customers and pursue the most cost effective, comprehensive solutions for them under the Custom program. The People would, therefore, urge the Commission to recommend that DCEO simply target the WWT sector through dedicated account management in its Custom program, increasing the ability to add custom features or services as necessary and increasing program flexibility. AG IB at 13-14; AG Ex. 1.0 at 12-13.

4) Combined Heating and Power

DCEO also proposes a standalone Combined Heating and Power ("CHP") program that is separate from the standard and custom programs. DCEO 1.1 at 16. The People acknowledge that CHP can indeed be a worthwhile technology. However, the People can see no reason why it could not be adequately promoted as a measure under either the Custom or Standard programs. AG Ex. 1.0 at 13. Following the People's recommended approach, DCEO could promote and incentivize CHP projects whenever they are cost-effective and make sense, but also ensure *other* cost effective efficiency measures are adopted at the same time. By following DCEO's stand-alone approach, there is a likely risk that these comprehensive efficiency opportunities will be ignored. AG Ex. 1.0 at 13. This not only results in lost potential savings, but it eliminates any opportunity for customers to first ensure they have adopted efficiency measures and then properly size the CHP system to be optimized to the lower overall facility electric and thermal loads. Therefore, the People urge the Commission to direct DCEO to include a CHP measure as a subset of the Custom program.

In their Reply Brief, the People acknowledged the worthwhile nature of DCEO's proposed Combined Heating and Power ("CHP"), but reiterated their concerns that it could be more adequately promoted as a measure under either the Custom or Standard programs instead of being a standalone program. AG IB at 14-15; AG Ex. 1.0 at 13. If the Commission allows DCEO's stand-alone approach, there is a potential risk that certain efficiency opportunities will be ignored, resulting in lost savings and eliminating opportunity to properly size the CHP system to be optimized to a customer's lower overall facility electric and thermal loads. AG IB at 14. Following the People's recommended approach, however, DCEO could promote and incentivize CHP projects whenever they are cost-effective and make sense, but also ensure *other* cost effective efficiency measures are adopted at the same time. Therefore, the People urge the Commission to direct DCEO to include a CHP measure as a subset of the Custom program.

In addition, the People raised concerns in their Initial Brief related to the evaluation, measurement, and verification of DCEO's CHP program. This discussion appears below in the section labeled Evaluation, Measurement &Verification ("EM&V").

5) Aggregation Program

DCEO proposed an Aggregation program that seeks to allow: "eligible applicants to combine projects in an effort to simplify the overall application process" and will assist in overcoming barriers created by franchise area agreements. DCEO Ex. 2.6. As with other programs, it is unclear why this program must be separated from DCEO's core public sector programs. Initially, the People raised an issue with the plan's lack of details explaining whether aggregation would be allowed within other programs, and the plan's unclear details as to what additional energy or cost savings would likely arise from this program. However, DCEO, in Rebuttal testimony, clarified that the plan is allowed within other programs, resolving this issue from the perspective of the People. DCEO Ex. 8.0 at 13. The People also note that DCEO explained, to a satisfactory degree, the plan's stated ability to overcome franchise barriers. DCEO Ex. 8.0 at 13.

The People, in their Initial Brief, raised concerns that the program appears to be less cost-effective than either the Standard or Custom programs, and does not encourage any different efficiency measures. AG Ex. 1.0 at 15. Notwithstanding, the People are satisfied with the program details as presented, but urge the Commission to instruct DCEO to include Aggregation in its Custom program or designing the Aggregation program in such a way as to avoid market confusion. As noted throughout this brief, it may be helpful for DCEO to seek the input of the SAG on these issues prior to implementing this program.

In their Reply Brief, the People continued to caution DCEO that the aggregation program as proposed appears to be less cost-effective than either the Standard or Custom programs and does not encourage any different efficiency measures. AG IB at 15; AG Ex. 1.0 at 15. Notwithstanding, the People are satisfied with the program details as presented by DCEO, but encourage DCEO to seek the input of the SAG on certain issues prior to implementing this program. The People urge the Commission to instruct DCEO to include Aggregation in its Custom program or design the Aggregation program in such a way as to avoid market confusion.

6) Energy Performance Contracting Program

The Energy Performance Contracting ("EPC") program, according to DCEO, is an effort to assist public sector customers in developing market-based performance contracts to capture efficiency savings, working with private energy service companies. DCEO Ex. 1.1. While this is a goal that the People conceptually support, it remains unclear why this is a stand-alone program and not simply a service of the Custom program. As with SEDAC, this creates a risk of creating confusion in the market. Integrating EPC into the Custom program would allow for better management of resources. AG Ex. 1.0 at 15. The People, therefore, urge the Commission to instruct DCEO to include EPC in its Custom program in a revised Plan, filed pursuant to Section 8-103(f) and8-104(f) of the Act. Again, as noted throughout this brief, it may be helpful for DCEO to seek the input of the SAG on these issues prior to implementing this program.

As with SEDAC, the People generally support the proposed Energy Performance Contracting ("EPC") program, but remain concerned that retaining EPC as a standalone program risks marketplace confusion and excessive administrative burden. As noted by the People in their Initial Brief, integrating EPC into the Custom program would allow for better management of resources. AG IB at 15. Again, as noted throughout the People's Initial Brief, it may be helpful for DCEO to seek the input of the SAG on certain issues prior to implementing this program. The People, therefore, urge the Commission to instruct DCEO to include EPC in its Custom program in a revised Plan, filed pursuant to Section 8-103(f) and 8-104(f) of the Act.

III. PROGRAM GOALS, BUDGETS AND COST-EFFECTIVENESS

A. DCEO-Proposed Energy Savings Goals

DCEO witness Mrozowski testified that the Department relied on calculations provided by the utilities to determine available funding given statutory rate caps. DCEO Ex. 1.0 at 19. As a result of the rate caps in Section 8-103(d) and 8-104(d), DCEO proposes adjusted savings goals that are less than the annual statutory savings requirements listed in subsections (b) of those statutes. 220 ILCS 5/8-103(b), 8-104(b). In addition, DCEO witnesses have made clear that DCEO believes it overestimated the level of savings goals it could achieve in the past, and that its proposed Plan savings goals are conservative. DCEO Ex. 6.0 at 11.

Despite this explicit modification to achievable savings goals, Staff witness Jennifer Hinman asserts that DCEO's proposed savings goals are higher than proportionate actual results it has achieved in past program years, and that goals should be adjusted further *downward* to better reflect savings more consistent with past progress. Staff Ex. 1.0 at 12. On the contrary, NRDC witness Chris Neme asserts that DCEO's proposed savings goals are significantly lower proportionate to spending than its actual historical results, and that goals should be adjusted *upwards* to better reflect past performance. NRDC Ex. 1.0 at 6-15.

Staff witness Hinman's proposal to further lower DCEO savings goals for its three-year Plan should be rejected for several reasons. First, both Staff witness Hinman and NRDC witness Neme provide comparisons of planned and actual net cost per unit savings from Plan 2 with proposed Plan 3 values. Specifically, in Staff Exhibit 1.1, Ms. Hinman provides a table comparing the planned and actual net cost per unit savings from Plan 2 with DCEO's proposed Plan 3 costs per unit of savings.[5] While this table differs slightly from Mr. Neme's Table 3 and Table 5, which compare these same figures for electricity and gas respectively, for the most part the figures appear to be consistent.[6] In virtually all cases, as is made clear by Mr. Neme's testimony and also shown in Ms. Hinman's Staff Exhibit 1.1, DCEO is projecting significantly more costs per unit of savings in Plan 3 than it actually spent in Plan 2. As documented by Mr. Neme, DCEO's proposed goals appear to be *significantly* lower than they could be and lower than DCEO has proven is achievable among its public sector customers in electric PY4/gas PY1. *See* NRDC Ex. 1.0 at 6-15. One factor identified by both Mr. Neme and Mr. Mosenthal appears to be DCEO's assumed lower realization rates. AG Ex. 1.0 at 19; NRDC Ex. 1.0 at 10. As discussed below, these lower realization rate assumptions are unnecessary and have the effect of inappropriately reducing savings estimates for the three-year period for both gas and electric programs. The Commission should, therefore, encourage the Commission to direct DCEO to revise its filing with higher goals commensurate with past performance, as appropriate, consistent with Mr. Neme's recommendation and the discussion of realization rates below.

In their Reply Brief, the People noted that both AG witness Philip Mosenthal and NRDC witness Chris Neme testified that DCEO's energy savings goals are unnecessarily and unreasonably low. AG Ex. 1.0 at 17-18, 22-23; NRDC Ex. 1.0 at 5. In addition, DCEO has proposed a spending level for its Plan 3 that exceeds amounts spent in Plan 2, coupled with this lower energy savings per dollar spent proposal. *See* NRDC Ex. 1.0 at 8, footnote 2.

Staff witness Jennifer Hinman has proposed that DCEO lower its energy savings goals so that they do not exceed the average of the savings achieved in the previous two years (electric PY 4/gas PY 1 and electric PY 5/Gas PY2). Staff IB at 5. Not surprisingly, DCEO states in its Brief that it agrees with this recommendation. DCEO IB at 11. The problem with this approach, however, is that this creates a Plan with even further reduced goals than the conservative numbers DCEO admits to proposing, with the same percentage of funding of the total dollars collected from ratepayers, i.e. the statutorily required 25% of total funds collected by gas and

[5] Attachment to response to ELPC 1.02, Staff Exhibit 1.1, p. 25 of 26.

[6] NRDC Exhibit 1.0, pp. 10 and 13. Ms. Hinman shows Plan 2 results, which presumably reflect averages across all three plan years, while Mr. Neme shows only electric PY4/gas PY1 figures. In almost all cases, these figures appear consistent, although not exactly identical, as would be expected.

electric utilities. *See* 220 ILCS 5/8-103(e); 8-104(e); DCEO IB at 5 ("The Commission has consistently interpreted the (statutory) language to mean percent of funding in both cases under the previous plans.")

As noted by NRDC witness Neme, on the electric side, DCEO is proposing to spend 30% more per MWh saved than it spent in PY4. NRDC Ex. 1.0R at 8. On the gas side, the proposal is even less ambitious, with DCEO proposing to spend an average of 132% per therm more than in GPY1 (i.e. more than double the spending) to acquire just 13% more savings per year. *Id.* at 11. AG witness Mosenthal, as noted in the AG Initial Brief, concurred that DCEO's proposed savings goals should be rejected by the Commission, with DCEO ordered to increase savings goals to levels commensurate with past performance (Electric PY 4/Gas PY1).

In Rebuttal testimony, DCEO's Witness Agnes Mrozowski outlined four potential factors in defense of lower program targets: (1) changing federal lighting standards, (2) uncertainty about new technology, (3) greater inclusion of long-lived measures, and (4) a desire to be conservative regarding future commitments. DCEO Ex. 1.0 at 10-11. But as explained in detail in NRDC's Initial Brief, these factors do not justify DCEO's proposed lower savings targets. *See* NRDC IB at 8-11. In particular, DCEO's claim that new lighting standards impacting "T12" bulbs – the common fluorescent bulbs found in public sector, commercial and industrial buildings – is a significant driver for increased costs and reduced savings goals is particularly insufficient. The new T12 lighting standard goes into effect on January 1, 2016, which is in the middle of PY 8. DCEO Ex. 6.0 at 10; Tr. at 35. During cross examination, Ms. Mrozowski attributed this change is the biggest reason for higher costs for energy savings delivered for the lighting program. *Id;* Tr. at 34. Yet, DCEO Ex. 1.2, page 4, shows that the budget for the Standard Program, which includes T12 lighting[7], is the highest in PY7, more than a year before the federal standard change takes effect. DCEO's own exhibits demonstrate why the agency's justification for lowered electric savings goals are unreasonable.

Staff's proposal to further lower the goals beyond the already inappropriately reduced goals should likewise be viewed by the Commission as a non-starter. Staff points to DCEO past performance in terms of goals achievement and prior customer participation levels as reasons for the proposed downward adjustment. Staff IB at 6-7. But DCEO is on record in Docket No. 11-0593 stating that it has largely re-adjusted what were originally overstated goals in DCEO's first Plan through a revised plan presented to its utility partners that were implemented in (electric) PYs 3 and 4. In that case, witness Mrozowski stated that DCEO revised its share of the annual electricity load reduction goals from approximately 20 percent to about 15 percent of the total utility/DCEO goal. *See* ICC Docket No. 11-0593, DCEO Ex. 1.0 (Direct Testimony of Agnes Mrozowski, filed September 20, 2012) at 5. As noted above, Mr. Neme's and Mr. Mosenthal's recommendation is that the savings goals presented in this docket be revised to match (electric) PY4 and (gas) PY1 levels.

The People would add that Commission approval of savings goals that offer no incentive for DCEO and its subcontractors to achieve maximum energy savings by continually modifying programs as need be and evaluations direct does nothing to serve the annual goals articulated by the General Assembly in both Section 8-103(b) and 8-104(b) of the Act.

For all of the reasons stated in both the AG Initial and Reply briefs and in NRDC briefs, the Commission should order DCEO to re-file its Plan to include gas and electric savings goals consistent with its Electric PY 4 goal and its Gas PY 1 goal.

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[7] Tr. at 34-35.

B. Barriers to Goals Achievement/Market Challenges

DCEO argues that certain market challenges exist that make achievement of designated energy savings goals uniquely difficult. No party disputes that point. There is consensus that DCEO faces significant challenges in eliciting participation among the two customer groups the General Assembly has identified as DCEO's targeted energy efficiency customer base -- public sector and low-income ratepayers who possess few, if any, discretionary resources to invest in efficiency. DCEO reports, for example, that numerous communities within Northern Illinois receive free or reduced cost electric delivery service as a result of franchise agreements with Commonwealth Edison Company ("ComEd"), making public sector customer interest in efficiency offerings particularly challenging. DCEO Ex. 6.0 at 33. In addition, low income residential efficiency offerings must be designed with the recognition that low-income customers have very limited or no available funds for efficiency investments. *Id.* at 23.

With respect to franchise agreements, however, little detail is included in the record regarding these challenges. In response to an AG data request requesting detail on the identity and number of municipalities that receive free utility service, DCEO stated that that precise information is in the possession of the utilities. AG Cross Ex. 1. The People urge the Commission to require DCEO to produce this information in its revised Plan. That information should be public and indeed would provide the Commission and interested stakeholders with valuable insight as to the challenges DCEO faces in engaging public sector customers. Future SAG discussions could focus on this significant barrier to engaging public sector participation in energy efficiency programs.

IV. NET-TO-GROSS ADJUSTMENTS

In their Initial Brief, the People observed that Section 8-103 and 8-104 of the Act require the delivery of *cost*-effective[8] programs by utilities and DCEO. 220 ILCS 5/8-103(a), (f)(5); 8-104(a), (f)(5). Cost-effective is specifically defined by the General Assembly as a measure that incorporates a benefit-cost ratio greater than one calculated based on the ration of the *net* present value of the total benefits of the program to the *net* present value of the total costs, as calculated over the lifetime of those measures. 220 ILCS 8-103(a); 8-104(a); 20 ILCS 3855/1-10. These statutory provisions also specifically envision the evaluation of efficiency programs – including those programs delivered by DCEO, and specifically identify that no more than 3% of program budgets be allocated to evaluation costs. *See* 8-103(f)(7); 8-104(f)(8). In short, the General

[8] Section 8-103(b) and 8-104(b) of the PUA requires the provision of "cost-effective" energy efficiency measures to meet incremental annual energy savings goals. As used in these Sections, "cost-effective" means that the measures satisfy the total resource cost test, and "total resource cost test" is defined in the Illinois Power Authority Act as "a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the *net* present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases." *See* 20 ILCS 3855/1-10.

Assembly specifically concluded that evaluation of cost-effectiveness of programs was essential to ensuring cost-effective program delivery.

The Commission has determined in multiple orders that Net-to-Gross analysis of program measures is critical to determining the cost-effectiveness of ratepayer-funded efficiency programs. As noted above, the Commission has been clear in numerous orders that the Section 8-103 and 8-104 program goals are net goals, and should reflect the true *net* savings captured. *See, e.g.,* ICC Docket No. 10-0570, Order of December 21, 2010 at 47; ICC Docket No. 10-0568, Order of December 21, 2012 at 72.

The NTG ratio is used to adjust the total estimated "gross" savings from all measures tracked through the program to estimate the true "net" effect that the program has produced. This can be different for a number of reasons, with the two primary components accounted for being "free ridership" and "spillover." Ag Ex. 1.0 at 17. Free ridership refers to the portion of customers participating in the program that would have installed some or all of the efficiency measures even without the program's existence. Therefore, while these savings are counted in the program administrator's gross savings tracking system, they do not provide true additional net savings to society since the customer would have captured some or all of the savings anyway. Spillover refers to influences of the program that result in some customers or trade allies actually pursuing additional efficiency, but not formally participating in the program. In this case, the program administrator's gross tracking system does not count these savings, but to the extent customers and trade allies were influenced by the program and it caused them to do additional efficiency measures on their own, this savings is in fact a net effect of the program. *Id.* In addition, an evaluation criterion known as "realization rates" reflect the ratio of gross savings that a program administrator has tracked and estimated to the actual estimated gross savings from impact evaluations. This variance in gross savings can come from a number of things, including program administrator errors in the database, failure to accurately apply the agreed-upon TRM values, inaccurate engineering estimation of custom savings, or other factors that are generally in control of the program administrators and/or their contractors. *Id.* at 18.

DCEO proposes to eliminate future NTG adjustments to gross savings in the evaluation of its programs, and adoption of an assumed lower realization rate for both public sector and low-income programs. DCEO Ex. 6.0 at 35. Specifically, DCEO energy savings calculations assume a NTG rate of 80% for public sector programs and 90% for low income programs. *Id.* DCEO witness Agnes Mrozowski testified that these figures combine recognition of realization rate, free ridership and spillover into a single value for public sector programs. *Id.* For low income programs, the assumed 90% value "is merely a realization rate." *Id.* As discussed below, the proposal to not account for free ridership and spillover, while also incorporating an assumed lower realization rate for DCEO customer participation should be rejected.

A. The Commission Should Reject DCEO's Proposal To Abandon NTG Adjustments For DCEO's Public Sector Programs.

In their Initial Brief, the People contended that DCEO's proposed elimination of NTG adjustments for public sector program evaluation should be rejected by the Commission for several reasons. As noted above, the Commission has been clear in numerous orders that the Section 8-103 and 8-104 program goals are net goals, and should reflect the true *net* savings captured. *See, e.g.,* ICC Docket No. 10-0570, Order of December 21, 2010 at 47; ICC Docket No. 10-0568, Order of December 21, 2012 at 72. That means examination of free ridership and spillover post-delivery of efficiency programs for the public sector should be retained. Therefore, DCEO's proposal is contrary to Commission-approved procedures rules regarding energy efficiency program best practices.

Second, as AG witness Mosenthal testified, it is not good practice to ignore NTG adjustments as a matter of public policy because doing so creates significant perverse incentives and ignores the true impact of the programs and evaluations of cost-effectiveness. AG Ex. 1.0 at 19. For example, the ability to encourage additional energy savings among customers is highly influenced by program designs and implementation strategies. As a result, eliminating any accountability for whether the programs actually create cost-effective net savings removes any strong desire on the part of program administrators to ensure their programs are indeed capturing additional cost-effective savings. *Id.* at 20. Mr. Mosenthal noted that the easiest customers and projects to fund are those that are happening regardless of the program because you do not actually have to change anyone's behavior – the very definition of free ridership. Without NTG adjustments, a program administrator can simply provide funding to a project that is already developed, or to a highly motivated customer that has already decided to act. If, on the other hand, DCEO is held accountable for NTG adjustments, DCEO will be incented to ensure that its programs are effectively influencing behavior and capturing new annual incremental savings, as Sections 8-103 and 8-104 of the PUA require. Without NTG adjustments, the easiest and most fruitful way to meet goals is to simply offer incentives to free-riders.

DCEO witness Mrozowski testified that "DCEO has never used free ridership as a criterion for whether a public entity is going to receive a grant or rebate." DCEO Ex. 6.0 at 38. Ms. Mrozowski seems to imply that because DCEO will allow even freeriders to participate in its programs it should be allowed to claim these savings even though they are not a net effect of the program. But this is misguided. Virtually every efficiency program in North America operates under the same procedures as Ms. Mrozowski has described, i.e., not refusing a customer or inquiring into their motives. It would be discriminatory to deny a customer a published rebate for which it is eligible because one suspects they may be a free-rider. The issue here is *not* whether the program honors its rebate offers for these customers, but one of accurately attempting to estimate the net impact of the program. Having to pay for free ridership is simply a cost of doing efficiency business. However, program administrators can work to ensure this is minimized through its program designs and implementation practices. The ICC has made clear that goals are intended to reflect the net effects of the programs. Doing away with that energy savings evaluation approach will hardly incite best practices in program delivery. *Id.* at 20-21.

For the low-income sector, Mr. Mosenthal argues that deeming a 1.0 NTG ratio, thereby eliminating NTG adjustments for this sector, in the recognition that very little participation in efficiency programs among this customer base would be taken without full funding from programs given the economic hurdles. Mr. Mosenthal testified that deeming a 1.0 NTG ratio is appropriate rather than spending funds evaluating if some *de minimis* amount of free ridership is occurring among low income customers. In addition, the efficiency provisions of the Act specifically exclude low income programs for cost-effectiveness requirements. 220 ILCS 5/8-103(f)(5); 8-104(f)(5). To date, the Stakeholder Advisory Group ("SAG") and the ICC have agreed with this approach and no Illinois NTG evaluations have been performed for low income customers. As a result, DCEO has never had to absorb any downward adjustments to its gross low income sector savings analysis. Thus, as discussed further below, the only NTG adjustment for low income program energy savings goals would be to remove the 0.9% downward realization rate adjustment proposed by DCEO and correspondingly set the goals 11% higher (1/0.9). *Id.* at 21.

However, for the public sector, Mr. Mosenthal recommended that evaluation of free ridership and spillover should and must continue. He noted that some of DCEO's "market transformation" programs are designed as Request For Proposal ("RFP") solicitations. This means customers must develop projects on their own and submit them to DCEO. But in Mr. Mosenthal's experience, a high portion of these projects may be measures customers are already contemplating and planning. This is the case because the program has not provided the marketing, outreach, and technical assistance to help customers find opportunities they did not already know about. In addition, as mentioned above, it appears DCEO expects to pay incentives that, on average, cover about one third of the efficiency measure costs in its Custom, HINGE and Aggregation programs, which constitute the bulk of spending in the public sector. Given that customers must contribute the other two thirds, it seems likely that some of these customers might have pursued these projects despite the incentives, according to Mr. Mosenthal. Given this uncertainty, NTG adjustments for free ridership and spillover in the evaluation of public sector programs are critical components of ensuring the delivery of cost-effective programs.

CUB witness Rebecca Devens was alone in supporting DCEO's proposal to discontinue NTG adjustments for all of its programs. In doing so, she noted that it would be inappropriate for DCEO to turn public entities away from participation in efficiency programs in an effort to minimize free ridership. CUB Ex. 1.0 at 8; CUB Ex. 2.0 at 6. But this sentiment incorrectly assumes that DCEO investigates customer motives and financial ability to pay in its marketing approach, and then turns customers away or in some way limits participation. No such approach to engaging public sector customers exists, in fact. As Mr. Mosenthal explained, Ms. Devens is ignoring the distinctions between program design and implementation on the one hand and measurement and evaluation of savings on the other. AG Ex. 2.0 at 4. Mr. Mosenthal testified that he is not aware of *any* program that routinely denies customers participation in programs they are otherwise eligible for purely because they might be freeriders. *Id.* at 5.

That being said, simply allowing freeriders to participate in a program is entirely different from counting savings that are not truly a result of the program. Rather, accepting that some funds and program resources will go toward freeriders is simply part of the cost of doing energy efficiency business. As Mr. Mosenthal noted, "*This does not absolve the Commission and program administrators from ensuring that best estimates of the ultimate impact of programs are made and used for purposes of determining savings performance.*" *Id.* To not do so would result in unreasonably high estimates of savings in the public sector, and would discourage DCEO from making appropriate planning and program design changes to minimize freeriders and attempt to maximize net savings and overall cost-effectiveness.

Finally, it should be noted that DCEO witness Mrozowski testified in Rebuttal testimony that it is not requesting any prospective deeming and has agreed to accept the evaluation results on a prospective basis. Thus, the People concur that adoption of the proposed Staff Modified NTG Framework is unnecessary. DCEO's willingness to apply NTG results retrospectively (to the extent the Commission orders NTG analysis) is the reason why Mr. Mosenthal did not submit his proposed Modified NTG Framework, which he submitted in both the ComEd and Ameren Plan 3 dockets. *See* ICC Docket No. 13-0495 (ComEd), AG Ex. 1.1; ICC Docket No. 13-0498 (Ameren), AG Ex. 1.1.

In sum, given the statutory criteria of cost-effectiveness, the requirements that evaluations of cost-effectiveness be made, Commission rulings adopting NTG analysis and best practices, as noted by Mr. Mosenthal, DCEO's proposal to discontinue NTG analysis for public sector programs should be rejected. The Commission should therefore urge DCEO to resubmit its Plan, pursuant to Section 8-103(f) and 8-104(f), to incorporate NTG analysis for its Public Sector programs outlined in its Plan.

In their Reply Brief, the People noted that DCEO has proposed that the existing NTG framework, which ensures that net savings are counted when measuring and verifying energy savings goals to ensure cost-effectiveness of programs, be eliminated for *both* its public sector and low-income programs. DCEO IB at 33. Specifically, DCEO proposes to do away with any assessments of free ridership or spillover. *Id.* In addition, the agency proposes that realization rates of 80% for public sector programs and 90% for low income programs automatically be applied to the establishment of energy savings. *Id.*

As noted in the AG Initial Brief at pages 19-27, this adjusted Gross Methodology proposal is contrary to both Section 8-103 and 8-104, which require the calculation of energy savings based on "net" results, as defined by the Total Resource Cost test, but also has the effect of unnecessarily reducing energy savings goals to be established in this docket. *See* AG IB at 19-27. Again, Section 8-103 and 8-104 of the Act require the delivery of *cost*-effective[9] programs by utilities and DCEO. 220 ILCS 5/8-103(a), (f)(5); 8-104(a), (f)(5). Cost-effective is specifically defined by the General Assembly as a measure that incorporates a benefit-cost ratio greater than one calculated based on the ration of the *net* present value of the total benefits of the program to the *net* present value of the total costs, as calculated over the lifetime of those measures. 220 ILCS 8-103(a); 8-104(a); 20 ILCS 3855/1-10. These statutory provisions also specifically envision the evaluation of efficiency programs – including those programs delivered by DCEO, and specifically identify that no more than 3% of program budgets be allocated to evaluation costs. *See* 220 ILCS 8-103(f)(7); 8-104(f)(8). Finally, the General Assembly made clear that utilities and DCEO would be held to a specific performance standard, albeit one that excludes the savings achieved under low-income programs. Both DCEO and the utilities risk losing authority for program administration to the Illinois Power Agency if they fail to meet the energy savings goals as modified by the Commission after a three-year period. 220 ILCS 5/8-103(j). In short, the General Assembly specifically concluded that evaluation of cost-effectiveness of programs was essential to ensuring cost-effective program delivery.

In their Reply Brief, the People reiterated that they do not oppose deeming a 1.0 NTG ratio for low-income programs. AG IB at 23. There is statutory support for such a position, too.

[9] Section 8-103(b) and 8-104(b) of the PUA requires the provision of "cost-effective" energy efficiency measures to meet incremental annual energy savings goals. As used in these Sections, "cost-effective" means that the measures satisfy the total resource cost test, and "total resource cost test" is defined in the Illinois Power Authority Act as "a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the *net* present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases." *See* 20 ILCS 3855/1-10.

Section 8-103(f)(5) and 8-104(f)(5) exclude DCEO's low-income programs from the TRC cost-effectiveness requirements of subsection (a) of these statutory provisions. That being said, public sector programs are *not* excluded from this cost-effectiveness analysis test. Those measures must continue to be evaluated by examining *net* cost-effectiveness. *See* footnote 2 above.

Moreover, the Commission has determined in multiple orders that Net-to-Gross analysis[10] of program measures is critical to determining the cost-effectiveness of ratepayer-funded efficiency programs. As noted above, the Commission has been clear in numerous orders that the Section 8-103 and 8-104 program goals are net goals, and should reflect the true *net* savings captured. *See, e.g.*, ICC Docket No. 10-0570, Order of December 21, 2010 at 47; ICC Docket No. 10-0568, Order of December 21, 2012 at 72. That means examination of free ridership and spillover post-delivery of efficiency programs for the public sector, should be retained. Therefore, DCEO's proposal is contrary to Commission-approved procedures rules regarding energy efficiency program best practices.

The AG Initial Brief outlined all of the reasons why DCEO's proposed elimination of NTG adjustments for public sector program evaluation should be rejected by the Commission. *See* AG IB at 19-25. The People will not repeat them here. In sum, those reasons include the above-cited statutory provisions requiring a "net" examination of energy savings, prior Commission precedent adopting the NTG framework for both utilities and DCEO, public policy that argues that removing NTG from the public sector evaluation framework creates significant perverse incentives and ignores the true impact of the programs and evaluations of cost-effectiveness. *Id.; see also* AG Ex. 1.0 at 19.

In defense of its request to eliminate NTG evaluation practices, DCEO notes in its Brief that "Given the complicated nature of public sector financing and the often troubled fiscal situation of local governments, k-12 schools, universities, state and federal government, DCEO will never use free ridership as a criterion for whether a public entity will receive DCEO EEPs funding." DCEO IB at 35. CUB supports DCEO's request, arguing in its Brief that a "NTG approach is more appropriate in an environment where evaluators are not sure whether customers are aware of utility programs" and that "it would be inappropriate for a state agency such as DCEO to turn public entities away because of concerns about program evaluation results." CUB IB at 4-6.

As noted by AG witness Mosenthal, virtually every efficiency program in North America operates under the same procedures as Ms. Mrozowski described in her testimony, i.e., not refusing a customer or inquiring into their motives. In fact, it would be arguably discriminatory (and inconsistent with Section 8-103(f)(5) to deny a customer a published rebate for which it is eligible because one suspects they may be a free-rider. The issue here is *not* whether the program honors its rebate offers for these customers, but one of accurately attempting to estimate the net impact of the program. Having to pay for free ridership is simply a cost of doing efficiency business. However, *program administrators can work to ensure this is minimized through its program designs and implementation practices.* The ICC has made clear that goals are intended to reflect the net effects of the programs. Doing away with that energy savings evaluation approach will hardly incite best practices in program delivery. AG Ex. 2.0 at 4-5; AG Ex. 1.0 at 20-21. CUB's position ignores these facts, and should be rejected.

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[10] The NTG ratio is used to adjust the total estimated "gross" savings from all measures tracked through the program to estimate the true "net" effect that the program has produced. This can be different for a number of reasons, with the two primary components accounted for being "free ridership" and "spillover." AG Ex. 1.0 at 17.

CUB's empathy for DCEO's proposal is likewise misguided. CUB's sentiment incorrectly assumes that DCEO investigates customer motives and financial ability to pay in its marketing approach, and then turns customers away or in some way limits participation. No such approach to engaging public sector customers exists, in fact. As Mr. Mosenthal explained, Ms. Devens is ignoring the distinctions between program design and implementation on the one hand and measurement and evaluation of savings on the other. AG Ex. 2.0 at 4. Mr. Mosenthal testified that he is not aware of *any* program that routinely denies customers participation in programs they are otherwise eligible for purely because they might be free-riders. *Id.* at 5.

DCEO also argues in its Brief that the lowered realization rates along with the elimination of NTG evaluation being proposed makes sense because various utility and DCEO evaluators use different methods for analyzing NTG ratios, thus creating inconsistent NTG values. DCEO IB at 34. But this is simply justification for the AG-proposed SAG creation of a consistent Policy Manual (as discussed later in this Brief) – not a reason to throw out the evaluation itself.

DCEO also argues that measuring free ridership and spillover as part of the NTG analysis is "quite complex" and, in addition, spillover (which generally increases NTG ratios) has been neglected in past analyses. DCEO IB at 34. Again, because evaluation techniques are complicated does not justify eliminating them.

DCEO also notes a "personal telephone communication from a senior fellow at ACEEE" as evidence that other Midwest states have adopted an "adjusted gross approach" for all or a portion of their energy efficiency programs. DCEO IB at 34. This is hardly persuasive or reliable evidence by which to eliminate an evaluation framework, however. It is unclear from this statement exactly what "adjusted gross" means in the context of this statement. DCEO's statement also admits that these states have *retained* NTG analysis for at least a portion of their programs. The People and NRDC are advocating in this docket that DCEO's public sector programs remain under the NTG analysis umbrella. That is not inconsistent with this representation of what other Midwestern states may or may not be doing in connection with NTG analysis, based on DCEO's own testimony that some of these states have eliminated NTG for a *portion* of its programs.

Mr. Mosenthal testified, too, that evaluation of free ridership and spillover should and must continue for DCEO's public sector programs because some of DCEO's "market transformation" programs are designed as Request For Proposal ("RFP") solicitations. AG Ex. 1.0 at 21-22. This means customers must develop projects on their own and submit them to DCEO. But in Mr. Mosenthal's experience, a high portion of these projects may be measures customers are already contemplating and planning. This is the case because the program has not provided the marketing, outreach, and technical assistance to help customers find opportunities they did not already know about. In addition, as mentioned above, it appears DCEO expects to pay incentives that, on average, cover about one third of the efficiency measure costs in its Custom, HINGE and Aggregation programs, which constitute the bulk of spending in the public sector. Given that customers must contribute the other two thirds, it seems likely that some of these customers might have pursued these projects despite the incentives, according to Mr. Mosenthal. Given this uncertainty, NTG adjustments for free ridership and spillover in the evaluation of public sector programs are critical components of ensuring the delivery of cost-effective programs. *Id.*

DCEO also adds that retaining NTG analysis for public sector programs may impact DCEO's ability to provide *innovative* programs that have great value in the long term. DCEO IB at 34-35. This rationale for eliminating NTG analysis in public sector programs should be rejected, too. While it is unclear what specific programs are referenced by the term "innovative", DCEO has in no way suggested that NTG evaluation would specifically jeopardize the availability of innovative programs. In fact, it should be noted that DCEO witness Mrozowski testified in Rebuttal testimony that it is not requesting any prospective deeming and has agreed to accept the evaluation results on a *retrospective*[11] basis – a more stringent methodology for computing savings if the evaluation results are not favorable.

Finally, given DCEO witness Mrozowski's testimony that the agency is not requesting any prospective deeming and has agreed to accept the evaluation results on a *retrospective*[12] basis, the People concur that adoption of the proposed Staff Modified NTG Framework is unnecessary in this docket. DCEO's willingness to apply NTG results retrospectively (to the extent the Commission orders NTG analysis) is the reason why Mr. Mosenthal did not submit his proposed Modified NTG Framework, which he submitted in both the ComEd and Ameren Plan 3 dockets. *See* ICC Docket No. 13-0495 (ComEd), AG Ex. 1.1; ICC Docket No. 13-0498 (Ameren), AG Ex. 1.1.

In sum, given the statutory criteria of cost-effectiveness, the requirements that evaluations of cost-effectiveness be made, Commission rulings adopting NTG analysis and best practices, as noted by Mr. Mosenthal, DCEO's proposal to discontinue NTG analysis for public sector programs should be rejected. To not do so would result in unreasonably high estimates of savings in the public sector, and would discourage DCEO from making appropriate planning and program design changes to minimize free riders and attempt to maximize net savings and overall cost-effectiveness. *Pursuant to DCEO's alternate request, public sector programs should be evaluated using NTG criteria and (as discussed below) a 1.0 realization rate, with retrospective application of evaluators' calculation of energy savings.*

The Commission should order DCEO to resubmit its Plan, pursuant to Section 8-103(f) and 8-104(f), to incorporate NTG analysis for its Public Sector programs outlined in its Plan, and retrospective application of the evaluators' results, as agreed to by DCEO in its alternative proposal.

B. The Commission Should Reject DCEO's Request to Deem Reduced Realization Rates.

As mentioned above, the People note that realization rates are intended to adjust any variances between what the program administrator estimated savings were and what evaluations ultimately estimated. AG Ex. 1.0 at 22. As discussed above, these adjustments are generally for factors within the Program Administrator's control, and thus DCEO should be held accountable for these variances. By requesting a reduced realization rate(approximately 80% for public sector program savings and 90% for low income program savings), DCEO is essentially creating a contingency buffer of savings, by designing programs for a certain savings level and then reducing the savings to conservatively set goals that are only a fraction of what they actually plan

[11] The AG Initial Brief incorrectly stated that Ms. Mrozowski accepts *prospective* application of evaluations. AG Initial Brief at 25.

[12] The AG Initial Brief incorrectly stated that Ms. Mrozowski accepts *prospective* application of evaluations. AG Initial Brief at 25.

to capture, to counteract evaluations that produce realization rates of less than 1.0. The bottom line effect of this request is to simply reduce projected savings goals as a hedge. This is inappropriate and should be rejected by the Commission.

It is important to note, too, that while realization rates also adjust for factors such as evaluators' findings that, for example, participants' average hours of use or baseline efficiencies are different than what was assumed and agreed to – factors beyond a Program Administrator's control – DCEO has minimal risk in Illinois. Illinois now uses a statewide Technical Resource Manual – approved by the Commission in Docket Nos. 12-0528 and 13-00077 – that incorporates deemed energy savings. Accordingly, DCEO is protected from an evaluation finding that an assumed participant's reasonable average hours of use or other assumptions is incorrect. Such post-installation findings by evaluators would only affect future deemed savings under Illinois' TRM policy. As a result, realization rates for purposes of claiming savings are primarily addressing variances over which DCEO has direct control and responsibility.

As a result, realization rates going forward should be presumed for planning purposes to 1.0. In other words, from a planning perspective, one should assume the savings being tracked in the database are correct based on the established TRM rules and actual program activity. Evaluator adjustments to gross savings because of actual variances in assumptions are simply part of the evaluator's job of determining if the savings were counted properly. Because variances between tracked savings and final evaluation numbers can reflect adjustments for things under the program administrator's control (e.g., errors in assumptions, inappropriate application of the TRM, etc.), the program administrator should be held accountable for these realization rate adjustments. AG Ex. 1.0 at 18.

Moreover, the People point out that no support exists within the plain language of either Section 8-103 or 8-104 of the Act for such an adjustment or savings evaluation approach. At a minimum, the proposed goals should be adjusted upwards to eliminate the assumed realization rates for public and low income sectors, respectively. Importantly, DCEO proposes that it prefers a retroactive application of NTG adjustments, if any. DCEO Ex. 6.0 at 35. Given this preference, which is in effect a more stringent application of NTG adjustments on savings goals calculations, the People support that request.

In order to ensure the delivery of cost-effective programs, the Commission should order DCEO to resubmit its Plan, pursuant to Section 8-103(f) and 8-104(f), to remove the reduced realization rates proposed in its Plan for both public sector and low income programs, which have the effect of lowering proposed savings goals unnecessarily. DCEO should also be required to incorporate the same NTG evaluation principles that apply to all utility efficiency programs for its public sector offerings, and thereby retain the calculation of *net* energy savings.

DCEO's Brief did not include a specific discussion of the rationale for supporting lowered realization rates, except for the reasons addressed in the NTG section above. In sum, realization rates going forward should be presumed for planning purposes to 1.0. In other words, from a planning perspective, one should assume the savings being tracked in the database are correct based on the established TRM rules and actual program activity. Evaluator adjustments to gross savings because of actual variances in assumptions are simply part of the evaluator's job of determining if the savings were counted properly. Because variances between tracked savings and final evaluation numbers can reflect adjustments for things under the program administrator's control (e.g., errors in assumptions, inappropriate application of the TRM, etc.), the program administrator should be held accountable for these realization rate adjustments. AG Ex. 1.0 at 18.

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V. DCEO'S REQUEST FOR UNFETTERED FLEXIBILITY

All parties generally agree that some amount of program and budget flexibility is needed to optimize program implementation, but some meaningful limits must be included to ensure the integrity of the Commission review process. In its proposed filing, DCEO argues that DCEO has proposed unlimited flexibility to modify its Plan 3 as it chooses, so long as it is consistent with any clear statutory or regulatory rules (e.g., that budgets do not exceed the budget cap). It appears that DCEO is asking for unilateral permission to make these changes as it sees fit without any stakeholder or Commission approval. While it argues that it will continue to check-in with the SAG and the Commission Staff, "[w]aiting for SAG approval would be (sic) delay project decisions and create a missed opportunity." DCEO Ex. 6.0 at 8.

While all parties reviewing DCEO's plan were supportive of allowing program administrators wide latitude to make plan and program design modifications as they see fit, based on what they are learning in the field, how markets are responding, and to effectively and in a timely manner make mid-course corrections to improve program effectiveness, DCEO's request is too broad. As AG witness Mosenthal noted, allowing unfettered flexibility makes it much easier for DCEO to simply diverge from its approved plan and shift budgets from more expensive to less expensive programs. AG Ex. 1.0 at 24. In effect, this allows DCEO to set the goals based on an expensive mix of resources and then easily achieve savings by pursuing less expensive resources. Had the Commission been given the less expensive plan from the outset, all else equal, it would have set DCEO's goals higher. In short, while not attributing or assuming any nefarious motives on DCEO's part, the proposal to approve unlimited flexibility allows too many opportunities to game.

ELPC witness Crandall likewise expressed concern with the proposal:

> DCEO's request for flexibility is vague as to what authorization it is seeking as well as the reason and need for such authorization, having described the request in only two sentences in its entire filing. For example, the request to modify program could potentially allow DCEO to temporarily stop, start, suspend, expand, reduce, delete or add measures, and otherwise modify programs at its sole discretion.

ELPC Ex. 1.0 (Crandall) at 4.

As noted above, DCEO is proposing goals that are drastically modified downward from those originally intended in Sections 8-103 and 8-104, given the statutory budget cap limits[13].

[13] *See* 220 ILCS 5/8-103(d); 8-104(d).

Significant cost differentials between the public sector and low income programs highlight the incentive DCEO has to shift programs dollars in order to achieve savings goals. For example, on the electric side, DCEO projects capturing public sector savings for an average of 25 cents/first-year kWh. In contrast, DCEO projects a cost of 97 cents/kWh for the low income sector, and $1.33/kWh for the market transformation programs. Therefore, if the ICC approves goals for this plan and then DCEO chooses to shift some low income and market transformation budgets to the public sector it would become far easier for it to meet its goals. As a result, complete flexibility begins to undermine the intent of approving plans in the first place, if there is no obligation to follow them and the drive to achieve asserted goals becomes paramount.

To alleviate this concern, and consistent with a proposal made in ICC Docket No. 13-0498 (Ameren Illiinois Company's Plan 3), AG witness Mosenthal suggested that the ICC establish some limits on flexibility. While these limits would not prevent DCEO from exceeding them should they so choose, it would trigger positive goal adjustments should DCEO choose to exceed them. Specifically, he proposes that any shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments. In other words, DCEO could underspend 10% in one program and overspend 15% in another program with no adjustments. However, if they were to shift resources beyond the 20% benchmark, then goals would be modified accordingly.[14] This proposal also works to DCEO's favor if it is having success with an expensive program and wants to shift funds into it from a cheaper program. In other words, it would result in a decrease in *goals* and protect DCEO in the event that a relatively inexpensive program is not working well and they decide to shift funds to more expensive program. *Id.*

That being said, Mr. Mosenthal recommended that the ICC direct DCEO to fully explain the rationale and justification for the program allocation it has selected and confirm programs are cost-effective or make a clear case why they should still be promoting programs that are not cost-effective. DCEO should bring proposed significant modification to program dollar shifting to the SAG for discussion and ideally to build consensus around the change. This should happen whether or not the 20% limit is exceeded, but is particularly important for significant changes. No party, including DCEO, challenges that fact that the SAG has proven to be an effective sounding board to allow various stakeholders to provide input and ultimately help build support for the programs while providing the program administrators with an added level of security in knowing whether any stakeholders have major concerns prior to any after-the-fact litigation. *Id.* at 26-27.

In Rebuttal Testimony, DCEO witness Mrozowski challenged this proposal, arguing that it was confused by opposition to the unfettered flexibility request, and noted that DCEO has in the past regularly consulted with both the SAG and Commission Staff. DCEO Ex. 6.0 at 6-8.

This argument, however, misconstrues Mr. Mosenthal's recommendation and impinges on the goals of seeking maximum achievement of energy savings goals through a collaborative process. In fact, Mr. Mosenthal made clear that he was not suggesting that the SAG should have the authority to overrule a program administrator decision. AG Ex. 1.0 at 27. Rather, the SAG involvement is designed to ensure that all stakeholders are aware of proposed changes and that DCEO has the opportunity to consider differing points of view prior to making a final decision.

[14] For example, if program A had a cost of 40 cents/kWh and program B had a cost of only 5 cents/kWh, and if DCEO shifted funds beyond the limit from program A to program B, a commensurate increase in goals would be triggered based on the eight-times higher amount of kWh expected to come from the shifted dollars than was originally planned.

In the event that a modification does require a modified goal, it can also reduce contentious litigation by ensuring all parties reach consensus on the exact amount to modify goals.

To be clear, no party suggests that SAG should be delegated the authority to overrule a program administrator decision. But the above-outlined process will ensure all stakeholders are aware of proposed changes and that DCEO has the opportunity to consider differing points of view prior to any final decision. In the event that a modification does require a modified goal, it can also reduce contentious litigation by ensuring all parties reach consensus on the exact amount to modify goals. *Id.*

In a follow-up data request response submitted to ELPC, however, DCEO agreed to accept a 20% threshold for program adjustments, provided that the limit is calculated and applied to shifts in spending between DCEO's public sector, market transformation, and low income programs at the portfolio level. *See* ELPC Cross Ex. 1 at 14 (DCEO Resp. to ELPC Data Request 3.1). Under this arrangement, DCEO would approach the Commission for approval to adjust its goals if it proposed to move more than 20% of the funds in one of its portfolios (public sector, market transformation or low income) to another. While this proposal appears reasonable, it should be noted that DCEO already has spending limitations within the statute. For example, it is required to spend a minimum of 10% of the entire portfolio of cost-effective measures on public sector customers. 220 ILCS 8-103(e). In addition, it can spend no more than 3% of program revenue on "breakthrough equipment and devices", otherwise known as market transformation measures. 220 ILCS 5/8-103(f)(g). Thus it is unclear on its face how much of a concession this proposal represents. However, DCEO also agreed to continue to inform and consult with the SAG regarding any significant program or budget adjustments, regardless of whether or not the 20% threshold would be exceeded. The Commission should make clear that such consultation should occur prior to making such significant program changes.

That being said, this compromise appears to be reasonable and ensures that program dollars are not shifted unilaterally between sectors without confirmation with the Commission. This proposal should be approved by the Commission and included in the Commission's final Order in this case, with the caveat that SAG consultation occurs *before* significant programs changes are made, rather than after the fact.

As noted in the People's Reply Brief, all parties in this docket generally agree that *some amount* of program and budget flexibility is needed in order to optimize program implementation. However, some meaningful limits must be placed upon this flexibility to ensure the integrity of the Commission review process. AG IB at 27. While there was overall general support for allowing program administrators wide latitude to make plan and program design modifications as they see fit, based on what they are learning in the field, how markets are responding, and to effectively and in a timely manner make mid-course corrections to improve program effectiveness, DCEO's initial request was too broad. ELPC witness Crandall also raised concerns about the vagueness of DCEO's proposal. ELPC Ex. 1.0 at 4. To alleviate these concerns and achieve some level of consistency with a proposal made in ICC Docket No. 13-0498 (Ameren Illinois Company's Plan 3), AG witness Mosenthal suggested that the Commission establish a limit on flexibility that would trigger positive goal adjustments in the event that any shifts of budgets result in a variance from planned annual program budgets of 20% or more.

Although DCEO raises some challenges to this proposal, DCEO effectively agreed to accept a 20% threshold for program savings goal adjustments, provided that the limit is calculated and applied to shifts in spending between DCEO's public sector, market transformation, and low income programs at the portfolio level. DCEO IB at 12-13. While the People appreciate DCEO's willingness to accept this threshold, the People also reiterate that DCEO has spending limitations within the statute. AG IB at 31; 220 ILCS 8-103(e), (f), (g). Thus, the People remain unclear as to how much flexibility DCEO is actually conceding. It is also unclear from DCEO's Brief as to exactly what it has agreed to do if the 20% threshold is reached. For example, ELPC's Brief makes clear that DCEO must seek Commission approval for program shifts that exceed 20%. ELPC IB at 6. DCEO, however, makes no mention of seeking Commission approval for adjustments that exceed 20 percent. DCEO IB at 13.

DCEO also agreed to continue to inform and consult with the SAG regarding any significant program or budget adjustments, regardless of whether or not the 20% threshold would be exceeded. DCEO IB at 13. The People, however, urge the Commission to make clear that such consultation should occur *prior to* making significant program changes.

The Commission should approve either Mr. Mosenthal's proposal, which as discussed above, would require the following:

- Any DCEO shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments. In other words, DCEO could underspend 10% in one program and overspend 15% in another program with no adjustments. However, if they were to shift resources beyond the 20% benchmark, then goals would be modified accordingly.[15]
- DCEO must fully explain the rationale and justification for the program allocation it has selected and confirm programs are cost-effective or make a clear case why they should still be promoting programs that are not cost-effective. DCEO should bring proposed significant modification to program dollar shifting to the SAG for discussion and ideally to build consensus around the change.

In the alternative, the Commission should adopt the proposal described in ELPC's Brief, which references Commission approval of program changes that exceed 20% of a program budget, with the caveat that consultation with the SAG should occur *prior* to DCEO making significant program changes.

VI. EVALUATION, MEASUREMENT AND VERIFICATION ("EM&V")

AG witness Mosenthal initially identified several areas of concern related to how DCEO expects to measure, verify and evaluate savings, including the following points:

1. DCEO's code compliance initiative does not present a clear picture as to how DCEO plans to estimate, evaluate, deem or otherwise claim savings.
2. DCEO proposes an arbitrary mechanism for claiming Combined Heat & Power ("CHP") savings based on an allocation of primary BTU savings across both electricity and gas sectors, rather than on traditional Illinois practice rooted in actual customer impacts at the meter that are reflected in the utility distribution system loads.

[15] For example, if program A had a cost of 40 cents/kWh and program B had a cost of only 5 cents/kWh, and if DCEO shifted funds beyond the limit from program A to program B, a commensurate increase in goals would be triggered based on the eight-times higher amount of kWh expected to come from the shifted dollars than was originally planned.

3. There is a potential that DCEO may double count savings between its SEDAC and Performance Contracting programs and the core public sector programs. In addition, Mr. Mosenthal also could not reconcile DCEO's apparent proposal to eliminate all measurement and adjustment based on spillover yet count spillover savings for these programs.

AG Ex. 1.0 at 28. Following the filing of DCEO's rebuttal testimony, a number of these concerns were alleviated, as discussed below. Others remain at issue, also discussed below.

A. Code Compliance Initiative

DCEO proposes a codes compliance initiative under its market transformation programs that would encourage better building efficiency code compliance by offering training, development of an infrastructure of building inspectors, and offering to fund building inspection costs. DCEO Ex. 1.1 at 24. The People acknowledge that this approach may be worthwhile as a market transformation effort in Illinois in order to develop the workforce, expertise and resources for effective code enforcement and compliance. However, as originally filed, the plan was unclear as to how DCEO intends to estimate and claim savings for this initiative. On rebuttal testimony, however, DCEO provided explanations of the methodology for calculating and quantifying residential and commercial energy savings. DCEO Exs. 6.1; 6.2. DCEO's proffered explanation represents sufficient progress for the People on the issue of calculation. However, the People still urge the Commission to direct DCEO to continue working with SAG in order to resolve a number of the complex issues relating to measuring code compliance and proper attributing of improvements to particular program actions. These issues can include working to resolve issues that arise due to long lag times between the cycles of new code adoption, new construction building cycles, actual design and construction of buildings, and performance of studies to identify compliance changes. AG Ex. 1.0 at 29.

The People appreciate DCEO's commitment to continue meeting with the SAG as well as the Codes Collaborative in order to hash out any remaining issues with DCEO's Code Compliance Initiative. DCEO IB at 29-30. As noted in the People's Initial Brief, DCEO has provided satisfactory answers to most of the issues that the People raised, particularly related to the issue of calculation. AG IB at 33. Nonetheless, the People urge the Commission to direct DCEO to honor its commitment to work with SAG in order to resolve a number of the complex issues relating to measuring code compliance, including long lag times between cycles of new code adoption, new construction building cycles, actual design and construction of buildings, and performance of studies to identify compliance changes.

B. Combined Heat and Power ("CHP")

The People, in their Initial Brief, note that no party opposes cost-effective promotion and adoption of CHP technology. However, DCEO has proposed what appears to be an arbitrary method of counting savings for this measure that diverges from standard practice in Illinois for claiming "customer side of the meter" savings. Specifically, they propose to calculate a primary BTU savings on the entire economy[16] and then arbitrarily allocate this savings estimate, with

[16] Mr. Mosenthal noted in testimony that DCEO proposes using an average generation heat rate to estimate this savings as well. This is problematic because baseload coal plants typically have much higher heat rates than

80% assigned to electricity and 20% to gas savings. AG Ex. 1.0 at 29. AG witness Mosenthal testified that such a savings calculation approach is inconsistent with normal practice in Illinois for claiming efficiency savings. It also has the potential to reduce the transparency and usefulness of the Section 8-103 (electric) and 8-104 (natural gas) savings data for planning and forecasting purposes because savings figures will no longer accurately reflect estimated efficiency impacts on the utility distribution system loads.

To understand Mr. Mosenthal's criticism, it is important to describe how CHP produces energy savings. As noted by Mr. Mosenthal, CHP projects are essentially fuel switching projects. In other words, while they improve overall efficiency, they perform this by using natural gas or some other fuel to generate both electricity and thermal energy. As a result, the effect of installing CHP is to save electricity while often increasing the usage of some other fuel. *Id.* at 30. Because the overall efficiency of the system is typically higher than that of the average central plant generators, overall energy is saved on a primary BTU basis. DCEO appears to have chosen a method of estimating this primary energy savings and then arbitrarily allocating 80% of the savings to electricity and 20% to natural gas. The DCEO Plan also draws funding from these two sectors in those 80%/20% proportions. *Id.*

This approach to calculating CHP energy savings is misguided and should be rejected by the Commission. The Section 8-103 and 8-104 programs are designed to reduce customer use of electricity and gas, respectively. For all other measures and programs in Illinois, savings are counted based on the impact of the customer's energy savings at the meter. By diverging from this approach Mr. Mosenthal testified that DCEO:

- has not made clear any reason or justification for this more complicated and non-standard approach;
- reduces the transparency of energy efficiency program savings numbers in Illinois whereby planners, evaluators, and forecasts will have difficulty understanding the true impacts on the electric and gas systems and how the EEPS impacts affect planning functions;
- clearly diverges from current practice of counting actual customer impacts at the meter;
- implies these customers will save gas and that the loads on the gas distribution company systems will go down, when in fact they will increase in most cases;
- under-estimates the actual electric savings on the electric utility systems;
- improperly accounts for the economics of CHP because it will be applying avoided costs to incorrect numbers that do not actually reflect the changes on the utility systems;
- further confuses savings estimates for CHP projects that are not gas-fired by allocating non-existent gas savings to them; and
- requires gas ratepayers to fund 20% of the CHP program, despite all the savings occurring on the electric system, which is inconsistent with how costs are assigned for these programs under Section 8-104 of the Act.

Id. at 31.

Other analogous savings calculations that Illinois program administrators have used in the past are informative for purposes of analyzing the CHP savings assumption problems described above. For example, efficient lighting typically results in less waste heat being emitted by lights. As a result, the TRM reflects this impact by recognizing the increased heating energy

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more recent gas plants that are more likely to be saved on the margin from CHP. As a result, if DCEO uses this proposed approach it is likely that it would overestimate primary BTU savings. AG Ex. 1.0 at 30.

usage (often provided by natural gas) from this electric efficiency measure. Fundamentally, CHP is no different. It is simply an electricity saving measure that has also creates an increase in natural gas usage. *Id. at 32.*

To solve these energy savings calculation issues, AG witness Mosenthal recommends that the Commission order DCEO to count CHP energy savings just like any other measure. In other words, energy savings should quantify the various electric and fuel impacts at the customer's meter, and on the local distribution utility systems. Such an approach will increase transparency around savings for customers, as well as the utilities and stakeholders. It will also be consistent with the statutory energy efficiency program guidelines, including the TRM. He noted, too, that funding for this program should come from DCEO's electric energy efficiency funds since the measure is an electricity saving measure and the electric avoided cost benefits will accrue to electric ratepayers. *Id.*

In response to this proposal, DCEO witness John Cuttica testified that his recommended approach to savings calculations measures BTU savings associated with the CHP system, and points to a recent amendment to Section 8-104(b) that states that "energy efficiency also includes measures that reduce the total Btus of electricity and natural gas needed to meet the end use or user." DCEO Ex. 7.0 at 9; 220 ILCS 8-104(b). This point, however, does not support adoption of the particular energy savings methodology being proposed by DCEO for CHP.

Section 8-104(b), while referencing measures that reduce Btus as qualifying energy efficiency measures, in no way establishes any particular methodology for counting combined heat and power savings, a point Mr. Cuttica acknowledged. Tr. 54. Mr. Cuttica also confirmed on cross-examination that current practice in Illinois is to count the actual savings of each fuel at the customer's meter. *Id.* Moreover, Mr. Cuttica confirmed that any assumed reduction in gas will not necessarily accrue to the particular natural gas utility delivery system that is being credited with the theoretical savings. Tr. at 57.

Mr. Mosenthal's proposed methodology for measuring CHP savings, unlike the DCEO proposal, is transparent, apportions savings at the customer meter, consistent with current evaluation practices, and appropriately assigns savings to each affected utility system as it actually occurs. The Commission should order DCEO to revise its CHP calculation of savings methodology consistent with the AG-recommended approach.

DCEO recommends in its Brief that the Commission accept its proposed public sector CHP program. DCEO IB at 22. In the AG Initial Brief, the People detailed all of the concerns raised by AG witness Mosenthal regarding this program proposal. Principal among the observations was the conclusion that the DCEO program proposes what appears to be an arbitrary method of counting energy savings that diverges from standard practice in Illinois for claiming "customer side of the meter" savings. Specifically, DCEO proposes to calculate a primary BTU savings on the entire economy[17] and then arbitrarily allocate this savings estimate, with 80% assigned to electricity and 20% to gas savings. AG Ex. 1.0 at 29. AG witness Mosenthal testified that such a savings calculation approach is inconsistent with normal practice in Illinois for claiming efficiency savings. It also has the potential to reduce the transparency and usefulness of the Section 8-103 (electric) and 8-104 (natural gas) savings data for planning and

[17] Mr. Mosenthal noted in testimony that DCEO proposes using an average generation heat rate to estimate this savings as well. This is problematic because baseload coal plants typically have much higher heat rates than more recent gas plants that are more likely to be saved on the margin from CHP. As a result, if DCEO uses this proposed approach it is likely that it would overestimate primary BTU savings. AG Ex. 1.0 at 30.

forecasting purposes because savings figures will no longer accurately reflect estimated efficiency impacts on the utility distribution system loads. AG IB at 34.

AG Ex. 1.0 at 31. AG witness Mosenthal recommends that the Commission order DCEO to count CHP energy savings just like any other measure. In other words, energy savings should quantify the various electric and fuel impacts at the customer's meter, and on the local distribution utility systems. Such an approach will increase transparency around savings for customers, as well as the utilities and stakeholders. It will also be consistent with the statutory energy efficiency program guidelines, including the TRM. He noted, too, that funding for this program should come from DCEO's electric energy efficiency funds since the measure is an electricity saving measure and the electric avoided cost benefits will accrue to electric ratepayers. *Id.* at 32.

DCEO notes that to address concerns expressed by Mr. Mosenthal as well as NRDC witness Dylan Sullivan, it agrees to several proposals. DCEO IB at 22. One of the proposals listed is "2) expand on the metering requirements to ensure that the EM&V personnel can obtain the needed data to measure the actual energy savings over the first 12 months of the system's operation." It is unclear whether this proposal satisfies Mr. Mosenthal's recommendation that the Commission only approve a CHP program that counts CHP energy savings just like any other measure. In other words, energy savings should quantify the various electric and fuel impacts at the customer's meter, and on the local distribution utility systems. That should be the underlying premise for any agreement related to the program.

DCEO also states that it would agree to "develop much more detailed Program Implementation Guidelines as DCEO does for all of its approved programs." DCEO IB at 22. This proposal is similarly vague. Its final proposal is to continue to work with the Utilities and the SAG in developing the implementation plans and documents. *Id.* This is a proposal that should be required in the final Order. At a minimum, however, the calculation of energy savings for this new program should follow accepted evaluation procedures outlined by Mr. Mosenthal.

Mr. Mosenthal's proposed methodology for measuring CHP savings, unlike the DCEO proposal, is transparent, apportions savings at the customer meter, consistent with current evaluation practices, and appropriately assigns savings to each affected utility system as it actually occurs. The Commission should order DCEO to revise its CHP calculation of savings methodology consistent with the AG-recommended approach.

C. SEDAC, Energy Performance Programs and the Risk of Double Counting

AG witness Mosenthal's initial analysis of DCEO's proposed SEDAC program raised a concern that any customer that follows through with actual implementation of the recommended measures could also collect financial incentives through the Standard, Custom, Aggregation or New Construction public sector programs. Because these customers would, by definition, be working with DCEO on a project and receiving these customized technical assistance services, there could be a risk that a particular customer's savings could be double counted. As noted above, the rebuttal testimony of DCEO has alleviated these concerns. DCEO Ex. 8.0 at 13. Nonetheless, the People still urge the Commission to enter an order directing DCEO to include the SEDAC program in its Custom program and encourage DCEO to continue seeking the input of the SAG in development of this program.

Similar to SEDAC, the People note that the Energy Performance Contracting ("EPC") program is a program that seeks to assist public sector customers in using performance contracting to do efficiency projects. Under the plan as designed, DCEO would provide various services to assist these customers in understanding, setting up and navigating these sometimes complex contracts. Although the People initially raised concerns about double counting of savings, DCEO's rebuttal testimony included assurances that DCEO's consulting groups have taken measures to avoid double counting. DCEO Ex. 8.0 at 13. Nonetheless, the People again note that maintaining this program as a standalone program risks creating market confusion and may create more of an administrative burden.

In their Reply Brief, the People appreciate the explanation made by DCEO of the efforts undertaken to reduce the risk of double counting associated with the SEDAC and EPC programs. DCEO Ex. 8.0 at 13. As expressed in the People's Initial Brief, DCEO's explanation is satisfactory. AG IB at 37-38.

Notwithstanding this understanding, the People reiterate that maintaining these programs as standalones risks creating market confusion and may create additional administrative burden. Therefore, the People urge the Commission to direct DCEO to include this program as part of DCEO's overall custom program rather than as a standalone program and encourage DCEO to continue seeking the input of the SAG in development of this program.

VII. IPA PROCUREMENT EFFICIENCY PROGRAM LEVERAGING

The People contend that DCEO's Plan does not include any leveraging of programs under Sections 8-103 and 8-104 of the Act with additional resources offered through the Illinois Power Authority ("IPA") Procurement process, provided for under Section 16-111.5B of the Act. 220 ILCS 5/16-111.5B.

DCEO submitted a proposal for program expansions to the IPA for funding and implementation under 16-111.5B. However, the IPA rejected the proposal based on its interpretation of the law which, according to the IPA Procurement Plan pending in Docket No. 13-0546, rejects bids from non-utilities. ICC Docket No. 13-0546, IPA Plan at 84. Unfortunately, the IPA's interpretation of Section 16-111.5B is that only Utilities can present proposals for additional energy efficiency programs to the IPA, and that if DCEO wants to participate, it must do so through the Utility RFP process outlined in that section of the PUA. ICC Docket No. 13-0546, IPA Procurement Plan at 84.

As noted by the IPA, there was consensus in the Commission-directed workshop process that cost-effective DCEO programs should be included in the procurement of energy efficiency for the IPA's annual portfolio. *Id.* The IPA notes that in its Plan that the RFP process was the same perceived problem that precluded inclusion of DCEO programs in last year's IPA procurement plan. *Id.* Notwithstanding these perceived limitations, the IPA stated that it "is open to entertaining additional proposals for creating a mechanism for their inclusion in this plan" and notes that it would follow any Commission order that included DCEO programs in this year's procurement and prospectively. IPA Plan at 84.

The OAG noted in its Response filed to the IPA Plan that it is particularly concerned with the lack of DCEO participation, given that delivery of low income efficiency programs will be impacted. Docket No. 13-0546, AG Response of October 7, 2013 at 4-5. Existing DCEO low income Section 8-103 programs are ripe for expansion and represent significant cost-effective opportunities[18] to both increase the delivery of overall achievable energy efficiency, but also provide needed benefits to low income electric utility customers who often struggle to pay utility bills. The IPA Plan notes at page 84 that both programs proposed by DCEO to the IPA have calculated TRCs that "easily exceeded one." IPA Draft Plan at 84.

In response to NRDC data request 1.02, DCEO has indicated that State procurement rules preclude DCEO from responding directly to the Utilities' RFP process, which solicits programs that are ultimately submitted to the IPA. AG Ex. 1.0 at 34. According to this data request response, DCEO cannot participate in this RFP process because it would bind DCEO to a proposal prior to actually contracting vendors to provide the service, in violation of State procurement laws. This appears to create a situation where, while the intent of 16-111.5B is to allow expansions of Section 8-103 programs into the IPA procurement process, there is (in DCEO's view) a legal "Catch 22" that prevents these expansions from happening.

AG witness Mosenthal testified, DCEO programs are ripe for expansion. DCEO's target market of low income customers is a customer segment that could truly benefit from DCEO's expansion of low income programs. DCEO has proposed goals for the low income sector that are substantially below the Section 8-103 and 8-104 statutory goals because of budget caps that prevent it from fully serving this important sector. DCEO Ex. 1.0 at 20. The IPA mechanism represents an ideal vehicle for expansion of these critical programs serving customers most vulnerable to utility disconnections.

The OAG believes it is important to incorporate DCEO programs within the Plan, given that DCEO is the entity that oversees the delivery of Section 8-103 programs targeted to low income customers. Existing DCEO low income Section 8-103 programs are ripe for expansion and represent significant cost-effective opportunities4 to both increase the delivery of overall achievable energy efficiency, while also providing needed benefits to low income electric utility customers who often struggle to pay utility bills.

The OAG's specific request that the Commission take evidence in the IPA Procurement docket on the perceived procurement contracting difficulties was not granted. A Commission Order in this docket is pending. The Commission has the opportunity in this docket (and in Docket 13-0546) to consider the legal restrictions and determine if it has any ability to order a solution within the constraints of 16-111.5B and State procurement laws. DCEO is a Program Administrator – at least for the public sector and low income customer groups – just as the Utilities are Program Administrators for the remaining customer groups. In the alternative, DCEO could participate in the utilities' RFP bidding process, but with a clear statement that the proposals are conditional on it successfully procuring the appropriate contractors after initial approval by the IPA. At a minimum, the Commission's Order in this Docket should direct DCEO, the Utilities and the IPA to convene a collaborative workshop process to fully explore and resolve these issues so that DCEO can effectively submit expanded Section 8-103 low income programs into the IPA 2014 procurement process.

Unless and until the Commission addresses this problem, low income electric customers will continue to be short-changed in the delivery of energy efficiency programs.

In their Reply Brief, the People noted that DCEO submitted a proposal for program expansions to the IPA for funding and implementation under 16-111.5B that included vital expansions of cost-effective low-income programs. However, the IPA rejected the proposal based on its interpretation of the law which, according to the IPA Procurement Plan pending in Docket No. 13-0546, rejects bids from non-utilities. ICC Docket No. 13-0546, IPA Plan at 84. Unfortunately, the IPA's interpretation of Section 16-111.5B is that only Utilities can present proposals for additional energy efficiency programs to the IPA, and that if DCEO wants to participate, it must do so through the Utility RFP process outlined in that section of the PUA. ICC Docket No. 13-0546, IPA Procurement Plan at 84.

The Commission has the opportunity in this docket (and in Docket 13-0546) to consider the legal restrictions and determine if it has any ability to order a solution within the constraints of 16-111.5B and State procurement laws. DCEO is a Program Administrator – at least for the public sector and low income customer groups – just as the Utilities are Program Administrators for the remaining customer groups. In the alternative, DCEO could participate in the utilities' RFP bidding process, but with a clear statement that the proposals are conditional on it successfully procuring the appropriate contractors after initial approval by the IPA. At a minimum, the Commission's Order in this Docket, or in the IPA Procurement docket, Docket No. 13-0546, should direct DCEO, the Utilities and the IPA to convene a collaborative workshop process to fully explore and resolve these issues so that DCEO can effectively submit expanded Section 8-103 low income programs into the IPA 2014 procurement process.

DCEO's Initial Brief requests that the Commission not take any action related to the IPA procurement in this docket, noting that the issue is being addressed in that 13-0546 docket. DCEO IB at 25. That recommendation is acceptable, assuming some action is taken in that docket. Either way, unless and until the Commission addresses this problem, low income electric customers will continue to be short-changed in the delivery of energy efficiency programs.

VIII. LARGE/INDUSTRIAL CUSTOMER PROPOSAL – SELF-DIRECT PROGRAMS

The Coalition to Request Equitable Allocation of Costs Together ("REACT"), submitted the testimony of Bradley Fults, who argues that large commercial and industrial customers have significant barriers to working within the existing Illinois programs. REACT Ex. 1.0 at 8-11. He claims these programs are not well suited to participation by large customers and therefore proposes a self-direct program that would allow these large users greater flexibility in making efficiency improvements and retaining control over their own contributions toward efficiency. *Id.* at 11-14.

While the OAG is sympathetic to the concerns expressed by Mr. Fults, and believes that some kind of pilot large customer program can and should be developed to address these perceive problems, we urge the Commission to reject the REACT Self-Direct program described in Mr. Fults' testimony. It should be noted that the OAG is encouraged that Mr. Fults claims that "the members of REACT are committed to energy efficiency, and are not looking to avoid supporting this [Section 8-103 and 8-104 programs] effort."[19] However, the proposal to create a self-direct program as proposed in testimony, is unnecessary and will likely result in lower overall energy savings and net benefits to all ratepayers.

Mr. Fults claims there are three main reasons why the current programs do not adequately support large customer projects:

1. Because large customers have significant dedicated in-house resources, they routinely adopt efficiency measures and have already implemented the "low hanging fruit."
2. Large customer projects often require complex planning and longer lead times than projects with smaller customers.

[19] REACT Ex. 1.0, pp. 7-8

3. There is too high an administrative burden for large customers to effectively participate in programs due to "needless bureaucracy and lack of clarity."[20]

REACT 1.0 at 7-8. In response to Mr. Fults' testimony, AG witness Mosenthal observed that Mr. Fults does not provide specifics about how or why the current programs do not and cannot overcome these barriers successfully. That being said, to the extent they do not currently serve the largest customers effectively, they can and should be modified by program administrators to remove any unnecessary barriers to participation. However, it is not clear what exactly these barriers are.

Mr. Fults' first point that large customers have dedicated in-house resources is certainly true. However, in Mr. Mosenthal's experience outside of Illinois, this tends to facilitate large customers participating in efficiency programs in *disproportionately high numbers, and capturing more than their fair share of efficiency program budgets and benefits.* Further, the claim that large customers "routinely adopt efficiency measures" also should serve to support those customers getting particular benefit from the programs because by definition they routinely have projects that will qualify for rebates and other assistance. All else equal, they are in the *best* position to leverage and benefit from efficiency program funds. AG Ex. 2.0 at 8. Mr. Mosenthal testified that in his experience outside of Illinois, large customers overwhelmingly benefit from utility efficiency programs, and typically (1) participate in much higher portions than any other customer segment; (2) are repeat participants that can access on-going funding, and (3) capture more benefits than they pay into efficiency program funds.

Mr. Fults' second point that many large customer projects can be complex and require a multi-year approach to planning and implementation is undoubtedly true, and AG witness Mosenthal agreed. However, Section 8-103 was recently modified to permit Program Administrators to fulfill annual savings goals for electric programs over a three-year period, consistent with Section 8-104 gas programs. 220 ILCS 5/8-103(b). Mr. Fults did not explain what about the current programs prevents this multi-year approach.

Certainly many programs in other jurisdictions work over multiple years on projects with large customers, and with this new amendment authorizing achievement of savings goals over a three-year period, no obvious impediments exist as to why Illinois program administrators cannot do the same. Mr. Mosenthal noted that this is also an issue for many medium-sized C&I customers, as well as most C&I new construction, both segments of which are served by Illinois programs. AG Ex. 2.0 at 8. To the extent there are specific program rules that create a barrier to large customer multi-year projects, REACT and other large customer groups should attend SAG meetings and articulate their concerns. However, resolving these issues with improved program designs is preferable to creating separate self-direct programs, which are not authorized in Section 8-103 (unlike Section 8-104), and will provide greater benefit to large customers who almost always can capture more benefits from the programs than the contributions to efficiency funding they must make. *Id.*

It is unclear as to what specific issues or concerns Mr. Fults' third criticism relate to — that programs are unnecessarily bureaucratic and administratively burdensome. Certainly, if this is the case, this can and should be remedied by the program administrators. Again, regular participation in SAG meetings would allow REACT representatives to present the program rules it finds burdensome so the program administrators and stakeholders can work together with them to find appropriate solutions.

[20] REACT Exhibit 1.0, pp. 8-9.

Mr. Mosenthal further testified that he has been working planning, designing, analyzing and evaluating efficiency programs throughout North America for 30 years, and has generally specialized mostly in the C&I sectors. It has been his overall experience that the largest customers are the most sophisticated, best positioned to take advantage of efficiency programs, have significant access to capital to enable them to leverage efficiency funding, are constantly making facility modifications and investments that allow them to benefit from programs, and overwhelmingly account for a large portion of program budgets and savings. *Id.* at 9. He further testified that it has also been his experience in some places that have permitted customers to opt-out or self-direct efficiency funds, that they sometimes have discontinued use of these opt-out and self-direct options because they typically limit any customer benefits to no more than they contribute to efficiency program funding. In contrast, large customers directly participating in programs can and typically do receive significantly more funding and services back from programs than they contribute to efficiency funding, thereby creating significant benefits to these customers, as well as to all ratepayers. Mr. Mosenthal also testified that it has also been his experience that the most successful programs establish long-term relationships with large customers and work on multi-year projects to ensure continuous improvement. These services can and should be structured to support large customer's procurement and other organizational policies.

In support of these points, Mr. Mosenthal testified that a 2011 Study of Participation Rates Among C&I customers in Massachusetts supports his points. As can be seen in the following tables, the largest customers overwhelmingly participate in programs at much higher levels than smaller customers, and have been responsible for the largest portion of savings and benefits, consistent with what Mr. Mosenthal found in other jurisdictions:

Table 5-5: Participation Rates by Account Size - Electric[21]

Participation Rates						
Usage Size Category	Number of Participants	Number of Billed Customers	KWh Savings	KWh Usage	% Participating	% Savings Achieved
<75 KW	5,042	327,236	81,266,292	7,734,904,093	1.5%	1.1%
75-300KW	1,089	13,606	65,350,829	5,981,721,548	8.0%	1.1%
300-750KW	519	3,326	61,307,063	5,569,696,232	15.6%	1.1%
750-1000KW	82	493	15,299,023	1,561,748,396	16.6%	1.0%
1000-5000K	248	900	89,836,336	6,018,647,877	27.6%	1.5%
>5000KW	41	78	152,863,753	1,251,988,685	52.6%	12.2%
Overall	**7,021**	**345,639**	**465,923,295**	**28,118,706,830**	**2.0%**	**1.7%**

[21] DNV-Kema, *Customer Profile Project, Revised Final Report*, prepared for the Massachusetts Program Administrators and the Energy Efficiency Advisory Council, June 20, 2013, P. 5-6. AG Ex. 2.0 at 10-11.

Table 5-9: Participation Rates by Account Size - Gas[22]

Participation Rates – Gas							
Usage Size Category	Maximum Value (Therms)	Number of Participants	Number of Billed Customers	Therms Savings	Therms Usage	% Participating	% Savings Achieved
Small	8,000	1,448	110,058	990,541	172,961,057	1.3%	0.6%
Medium	80,000	770	14,918	2,359,033	312,998,254	5.2%	0.8%
Large	1,000,000	94	1,242	3,211,538	263,546,098	7.6%	1.2%
Very Large	48,753,283	19	80	1,335,973	282,990,504	23.8%	0.5%
Overall		**2,331**	**126,298**	**7,897,084**	**1,032,495,913**	**1.8%**	**0.8%**

AG Ex. 2.0 at 10-11. As can be seen above, the larger a customer is (in terms of energy usage), the higher its propensity to participate in efficiency programs. In addition, for electric, more than half of the largest customers participated *in just this single program year*. Mr. Mosenthal added that in his experience, many large customers participate in efficiency programs regularly every year, which is not atypical. The above data shows that efficiency programs can be, and usually are, most advantageous to the largest customers who have the resources to leverage program funds and overcome the various rules and procedures. Further, in general self-direct approaches leverage less private market spending, create fewer jobs and capture lower overall savings and benefits to all ratepayers. *Id.* at 11. At this point in time, based on this record, and putting aside for the moment the fact that Section 8-103 does not specifically authorize the creation of a self-direct program (unlike Section 8-104), the People do not support a self-direct approach.

The People urge the Commission to reject REACT's proposed self-direct program. Rather, the ICC should direct REACT to engage with the program administrators and SAG to address its concerns and work with these parties to modify programs in ways that best serve its constituents. In addition, the ICC should make clear that program administrators can and must work with all appropriate customers to commit to multi-year projects that span currently approved program or planning periods, particularly in light of the recent modification to Section 8-104(b) of the Act, which permits achievement of annual savings goals over a three-year period. The People have reason to believe that REACT is willing to engage in such discussions, given recent data requests directed to the People, and truly appreciate that kind of cooperation and interest in developing a collaborative approach with ComEd and interested stakeholders to address these customers' concerns.

Finally, Mr. Mosenthal identified other reasons why self-direct programs that allow customers to retain control of their efficiency funds and use them to cover 100% of the costs of "efficiency" projects often results in three undesirable outcomes:

1. **Failure to leverage private investment.** Permitting large C&I customers to opt out of the Section 8-103 and 8-104 programs means the efficiency program funds do not leverage additional private party investment in cost-effective efficiency. As a result, the Section 8-103 ratepayer funds are more limited in their overall impact. This is especially disappointing since the largest customers have the greatest access to capital to supplement the program funds.

[22] *Id*. at 5-8.

2. **Inadequate measurement and verification of energy savings.** Many self-direct programs, including the Illinois gas self-direct program, do not have appropriate levels of measurement and verification to ensure that funds are used on appropriate and cost-effective efficiency. As a result, often a substantial portion of these funds are either used to fund freeridership (e.g., customers simply accounting for the funds by allocating to things they were already doing), pay for non-cost-effective measures, or pay for business-as-usual plant investments that do not really improve efficiency over a standard practice new baseline efficiency (e.g., customers replace older equipment with standard new equipment and claim savings compared to the very old and less efficient equipment which would have been replaced anyway).
3. **Creates inequitable cross-subsidies.** Self-direct programs allow the heaviest users of energy to completely avoid contributing to overall ratepayer efficiency efforts, effectively requiring heavier cross-subsidies of the efficiency programs from the remaining customers, who both bear less responsibility for energy use and have less ability to participate in programs. Moreover, the largest users are responsible for a significant amount of the supply pressure that tends to drive up market prices and require expensive generation, transmission or distribution system upgrades. While they should not be sharing an inordinate burden in contributing to the health of the overall utility systems, they already typically pay the lowest retail supply rates and Mr.Mosenthal testified that he sees no policy reason they should be completely exempt from contributing to these broader societal goods and shift the entire energy savings burden to only smaller, lower-use customers.

AG Ex. 2.0 at 12-13. Other evidence in this docket supports rejection of a self-direct program for large electric customers. NRDC Witness Neme (NRDC Ex. 1.0 at 18-19) and ELPC Witness Crandall (ELPC Ex. 1.0 at 6-8) discuss the gas self-direct program and DCEO's role in administering it in their Direct testimonies. They both argue that DCEO should establish more robust measurement and verification (M&V) procedures to ensure that actual energy savings are being captured with these self-direct funds and to estimate net savings and spending on efficiency. The People concur with these points.

While Section 8-104 does not provide or require any specific criteria in terms of measurement and verification, nothing in this Section of the Act precludes DCEO from establishing and implementing more rigorous procedures. The legislation clearly permits DCEO to "audit" the self-direct customer applications on the gas side. 220 ILCS 5/8-104(m)(3). The Commission, therefore, should order DCEO to increase the scrutiny over the spending and savings in this program and ensure these funds are being spent wisely.

In its Brief, REACT argued for the approval of a large industrial/commercial self-direct pilot proposal for DCEO customers, consistent with any self-direct program approved for Commonwealth Edison ("ComEd") customers. REACT IB at 11. REACT notes that in the current Commission proceeding to approve ComEd's 2014-2016 energy efficiency plan, "REACT has proposed an electric self-direct program that would allow the largest Illinois electricity users to access their own funds to make cost-effective investments in energy efficiency projects, while providing appropriate monitoring and verification." *Id.* REACT also points to AG responses to REACT data requests that highlight AG witness Mosenthal's interest in participating in a SAG-involved collaborative approach to creating an electric commercial/industrial pilot that satisfies the concerns of these large users of energy who claim difficulty in participating in existing energy efficiency programs. REACT IB at 13.

In their Reply Brief, the People reiterated that they support a collaborative approach to development of a pilot program that satisfies the concerns of these large customers while creating a program that satisfies the statutory framework for permissible programs under Section 8-103 and 8-104 of the Act. The People do not agree, however, that electric customers can retain Section 8-103 funding for a "self-direct" program as Section 8-103 now reads. For example, Section 8-104 of the Act specifically provides for a self-direct program for qualifying large natural gas customers under subsection 8-104(m). Section 8-103 includes no such self-direct provision.

That being said, the ICC should make clear that program administrators can and must work with all appropriate customers to commit to multi-year projects that span currently approved program or planning periods, particularly in light of the recent modification to Section 8-104(b) of the Act, which permits achievement of annual savings goals over a three-year period, and REACT witness Fults' stated concerns. As noted in the AG Initial Brief, the People have reason to believe that REACT is willing to engage in such discussions, given recent data requests directed to the People, and truly appreciate that kind of cooperation and interest in developing a collaborative approach with ComEd, DCEO and interested stakeholders to address these customers' concerns. In light of REACT's stated concerns, the Commission should direct DCEO to work with REACT, both outside of and in the SAG, in an effort to develop a pilot program that meets the needs of these large customers, but does so within the legal framework established in Section 8-103 and 8-104 of the Act. Such a program should not authorize customer retention of efficiency dollars for electric programs, given the existing statutory electric/gas framework. The People are happy to commit to working with the affected parties in any way that furthers that goal.

IX. ENERGY EFFICIENCY POLICY MANUAL

The People support the continued operation of the SAG for those duties enumerated in Mr. Mosenthal's Direct Testimony.[23] AG Ex. 1.0 at 37-38. To date, the SAG process has fostered dialog, collaboration, education on key efficiency issues, and opportunities to comment upon and inquire about new and modified programs. The People commend DCEO for working with the SAG to seek input and help develop new, innovative program ideas, and for engaging experts from the University of Illinois to provide technical and policy support and analysis to

[23] Generally speaking, the Commission's original directive for the Stakeholder process included the following duties: reviewing progress toward achieving the required energy efficiency and demand response goals and to continue strengthening the portfolio; reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs where the change is more than 20%. ICC Docket No. 07-0539, Order of February 6, 2008 at 24. The Commission later expanded the role of the SAG to include the following duties: reviewing new program proposals, cost-effective demand response measures and real-time pricing proposals; considering other sources of funding that could be used to fund energy efficiency outside of ratepayer funds; developing a TRM jointly with the SAG and other utilities and providing annual TRM updates; participating in a joint gas-electric SAG; and considering Net-to-Gross Framework updates, with enumeration of consensus and dissenting opinions. ICC Docket No. 10-0568, Order of December 21, 2010 at 25, 28, 44, 70, 72.

inform SAG discussions and contribute to the TRM. *See, e.g.*, DCEO Ex. 1.0 at 15; DCEO Ex. 2.0 at 6.

Notwithstanding, the People urge the Commission to order DCEO's ongoing participation in the SAG for each of the enumerated duties listed in the footnote below. Additionally, the People request that the Commission direct DCEO to work with the SAG on the following:

- improving the evaluation, measurement and verification (EM&V) process so that reports are produced in a timely fashion to inform TRM and NTG updates;
- providing SAG input to draft EM&V plans so that SAG participants can recommend information and data that is gather and produced through the EM&V process;
- requiring DCEO evaluators to concurrently send draft EM&V reports to DCEO, the ICC and the SAG;
- providing written quarterly reports to the SAG no later than forty-five (45) days after the close of the quarter that contain program and portfolio-level accomplishments (kWh, kW, therms) relative to goals, program and portfolio-level expenditures relative to budget forecasts, any fund shifts greater than 20% of program budgets, expenditures on administrative costs, EM&V costs and marketing and outreach costs;
- an Illinois Energy Efficiency Policy Manual, designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission; and
- reviewing "best practices" program models for serving low and low-moderate income customers to ensure that Illinois is a national leader in effectively serving low and low-moderate income customers.

AG Ex. 1.0 at 39.

Unfortunately, Staff witness Hinman objected to the very idea of creating a policy manual. Staff Ex. 3.0 at 5. Ms. Hinman argued that the proposal was vague, could be the source of contention and would impose additional time commitments on the SAG. Staff Ex. 3.0 at 4-5. The People find Staff's sentiment surprising, given discussions that occurred and agendas proposed in recent SAG meetings that referenced the establishment of such a manual through upcoming SAG meetings.

The goal of establishing a Policy Manual would be to ensure that evaluators and program administrators for the various utility service territories and customer bases play by the same set of rules in terms of monitoring savings achieved and evaluating programs. Currently, the utility and DCEO Program Administrators and their individually selected evaluators at times play by different rules, as acknowledged by Ms. Hinman. Tr. at 80. For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual, designed to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

In addition to continuing to participate with the SAG as DCEO has pledged, the People in their Initial Brief also urged the Commission to specifically direct DCEO to work with the SAG on an Illinois Energy Efficiency Policy Manual. AG IB at 49-51. The purpose of this policy manual, as the People have been very clear about throughout this docket, is to ultimately streamline and encourage consistency on various program-related policies for review and approval by the Commission. AG IB at 50; AG Ex. 1.0 at 38.

DCEO does not directly address this proposed manual in its Initial Brief and Staff unfortunately continues to object to the People's proposal to create a policy manual. Staff IB at 21. DCEO's Brief, however, inadvertently shines a light directly upon the need for, and the potential benefits of, the People's proposed manual in its discussion of its proposed elimination of NTG analysis for its public sector programs:

> First, the calculated Net-to-Gross values for the Illinois EEPS programs managed by the utilities and DCEO *have varied considerably* for similar or identical programs and from year to year, generally without any clear explanation. This seems to *indicate differences in the methods* used by various evaluators or variability inherent in the methods used by presumably equally competent evaluation teams.

DCEO IB at 34 (Emphasis added.) Here, DCEO acknowledges that otherwise competent evaluation teams can arrive at considerably different values based on the different methods employed by those evaluators. This is precisely the type of situation that the People seek to avoid in the future by creating a consistent policy manual.

Consistent with their testimony, Staff raises concerns about the vagueness of the proposed manual and the dedication of resources required to develop a manual. Staff IB at 21. Staff witness Ms. Hinman, despite being opposed to the policy manual, also notes that there is currently a system where different administrators follow different sets of rules. Tr. at 80. Therefore, as noted in the People's Initial Brief, a policy manual would give the administrators the same set of rules to follow. In addition, it would be of great usefulness to create consistent approaches in evaluation processes, identification of common cost definitions and application of cost-effectiveness evaluation principles among the various utility and DCEO efficiency programs. AG IB at 49.

Throughout this docket, the People have been clear about the goals associated with establishing a Policy Manual. AG IB at 50-51; AG Ex. 1.0 at 38. The primary goal of the proposed policy manual would be to ensure consistency in terms of monitoring savings achieved and evaluating programs. This is particularly true when compared with the current situation where the utilities and DCEO Program Administrators and their individually selected evaluators play by different evaluation rules. Contrary to the views of Staff, the People are not seeking to further burden the SAG or create additional work that further constrains already limited resources. Rather, the People seek to create the most efficient and consistent processes possible. In the long run, ensuring that evaluation approaches are consistent among the utility and DCEO Program Administrators will save SAG resources that would otherwise spend time trying to understand why program evaluation practices differ so significantly among the evaluation teams.

For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated through consistent evaluation practices and rules.

X. CONCLUSION

For the foregoing reasons, the People of the State of Illinois request that the Commission issue an order consistent with the positions stated in this Statement of Position.

The People of the State of Illinois

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